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NEW DELHI, SATURDAY, APRIL 10, 1993/CHAITRA 20, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)  
PART II—Section 3—Sub-section (II)

(रक्ष मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए विधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications issued by the Ministries of the Government  
of India (other than the Ministry of Defence)

वित्त मंत्रालय  
(राजस्व विभाग)

आदेश

नई दिल्ली, 4 मार्च, 1993

स्टाम्प

MINISTRY OF FINANCE  
(Department of Revenue)

ORDER

New Delhi, the 4th March, 1993

STAMPS

का. धा. 709 :—भारतीय स्टाम्प अधिनियम 1899 (1899 का 2) को धारा 9 की उपधारा (1) के खण्ड (ख) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा कोटक महिन्द्रा फाइनेन्स लिमिटेड बम्बई को मात्र सान लाख और तेरह हजार रुपये के समेकित स्टाम्प शुल्क भ्रवा करने की अनुमति प्रदान करती है जो कि उक्त कम्पनी द्वारा जारी किए जाने वाले पैनामीम-पैनामीम रुपये के अंकित मूल्य के कुल आठ करोड़ इक्यावन लाख और पच्चीस हजार रुपये के मूल्य के 1 से 17,82,500 तक की संख्या वाले 17,82,500 ऋणपत्रों पर स्टाम्प शुल्क के कारण प्रभावी है।

S.O. 709.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Kotak Mahindra Finance Limited, Bombay, to pay consolidated stamp duty of rupees Seven lakhs and thirteen thousand only, chargeable on account of the stamp duty on 17,82,500 debentures bearing distinctive numbers 1 to 17,82,500 of the face value of rupees forty five each that is of the aggregate value of rupees eight crores, ninety one lakhs and twenty five thousand only to be issued by the said company.

[सं. 7/93-स्टाम्प/का. सं. 33/62/93—प्रि. क.]

[No. 7/93-Stamps/F. No. 33/62/93-ST]

ठाकुर दत्त, उप-मन्त्रि

THAKUR DATT, Dy. Secy.

(1085)

( अथ विभाग )

नई दिल्ली, 15 मार्च, 1993

का. आ. 710 :—बचिष्य निधि अधिनियम 1925 ( 1925 ज. 19 ) की धारा 8 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा उक्त अधिनियम की अनुसूची में नमूदलिखित लोक संस्थान को शामिल करती है :—

“भौतिकी संस्थान भुवनेश्वर।”

[संख्या 4 (1)—संस्था V/92 ( 1 )]

जी. जोसेफ, निदेशक

(Department of Expenditure)

New Delhi, the 15th March, 1993

S.O. 710.—In exercise of the powers conferred by sub-section (3) of section 8 of the Provident Funds Act, 1925 (19 of 1925), the Central Government hereby adds to the schedule to the said Act the name of the following public institution, namely:—

“Institute of Physics, Bhubaneswar.”

[No. 4(1)-E.V./92(I)]

G. JOSEPH, Director

( आर्थिक कार्य विभाग )

नई दिल्ली, 23 मार्च, 1993

का. आ. 711 :—केन्द्रीय सरकार, राजभाषा ( संघ के शासकीय प्रयोजनों के लिए प्रयोग ) नियमावली 1976 के नियम-10 के उप-नियम (4) के अनुमरण में वित्त मंत्रालय ( आर्थिक कार्य विभाग ) के प्रशासनिक नियंत्रण में स्थित भारत सरकार टंकमाल, नौएडा को जिनके 80 प्रतिशत से अधिक कर्मचारीबृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिपूचित करती है।

[सं. 13011/1/92—हि.का.क.]

प्रदीप पुरी, उप-सचिव

(Department of Economic Affairs)

New Delhi, the 23rd March, 1993

S.O. 711.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies India Government Mint, Noida (under the Administrative control of Ministry of Finance, Department of Economic Affairs) whereof more than 80 per cent of staff have acquired working knowledge of Hindi.

[No. 13011/1/92-HIC]

PRADEEP PURI, Dy. Secy.

कार्यालय महालेखाकार ( लेखा परीक्षा )—II राजस्थान

जयपुर, 23 मार्च, 1993

का. आ. 712 :—महालेखाकार (लेखा परीक्षा)—II राजस्थान, जयपुर, विभागीय जांच ( साक्ष्यों की उपस्थिति के प्रवर्तन एवं प्रलेखों की प्रस्तुति ) नियम 1972 (1972 का 18) की धारा 4 की उपधारा (2) में प्रदत्त अधिकारों का प्रयोग करते हुए श्री जी. के. भटनगर, उप महालेखाकार को सर्वश्री बद्री प्रसाद शर्मा, सहायक लेखा परीक्षा अधिकारी, रामस्वरूप नाटाणी, अनुभाग अधिकारी एवं भगवान सहाय वर्मा, वरिष्ठ लेखा परीक्षक, जिनके विरुद्ध एक विभागीय जांच करनी है, के सम्बन्ध में, उक्त नियम की धारा 4 की उपधारा (1) द्वारा उनको प्रदत्त अधिकारों का प्रयोग करने के अधिकार का विधेय उल्लेख करते हैं।

[क्रमांक : गो. कक्ष/कि-11022/142/90-93]

व्याम चन्द्र गुप्ता, उप महालेखाकार (प्रशासन)

OFFICE OF THE ACCOUNTANT GENERAL  
(AUDIT—II), RAJASTHAN

Jaipur, the 23rd March, 1993

S.O. 712.—In exercise of the powers conferred by sub-section (2) of Section 4 of Departmental Inquiries (Enforcement of attendance of witnesses and production of Documents) Act, 1972 (18 of 1972), the Accountant General (Audit)-II, Rajasthan, Jaipur hereby specifies Shri G. K. Bhatnagar, Dy. Accountant General, as an authority to exercise the powers conferred on him by sub-section (1) of section 4 of the said Act in respect of S/Shri Badri Prasad Sharma, Asstt. Audit Officer, Ram Swaroop Natani, Section Officer and Bhagwan Sahai Verma, Sr. Auditor against whom a departmental inquiry may be held.

[No. CC/K.11022/142/90-93]

V. C. GUPTA, Dy. Accountant General (Admn.)

जयपुर, 23 मार्च, 1993

का. आ. 713 :—जबकि महालेखाकार (लेखा परीक्षा)—II राजस्थान, जयपुर इस विचार से कि सर्वश्री बद्री प्रसाद शर्मा, सहायक लेखा परीक्षा अधिकारी, रामस्वरूप नाटाणी, अनुभाग अधिकारी एवं भगवान सहाय वर्मा, वरिष्ठ लेखा परीक्षक के सम्बन्ध में विभागीय जांच के प्रयोजन से श्री कैलाश चन्द्र शर्मा, होटल प्रबन्धक गोवर्धन निवास लीजिंग एवं बोर्डिंग, धरियाबाद, जिला—उदयपुर, श्री मानसिंह मोरचकी, भूतपूर्व तहसीलदार, धरियाबाद जिला—उदयपुर एवं श्री एस. एन. शर्मा, भूतपूर्व उप महालेखाकार/एन. आर. ए. से किसी प्रलेख को मंगाने/साध्य हेतु बुलाना आवश्यक है।

इस कारण से महालेखाकार (लेखा परीक्षा)—II, राजस्थान, जयपुर विभागीय जांच ( साक्ष्यों की उपस्थिति के प्रवर्तन एवं प्रलेखों की प्रस्तुति ) नियम 1972 (1972 का 18) की धारा 4 की उपधारा (1) में प्रदत्त अधिकारों का प्रयोग करते हुए, श्री जी. के. भटनगर, उप महालेखाकार को उपरोक्त जांच के मामले के सम्बन्ध में उक्त नियम की धारा 5 में उल्लेखित अधिकारों का प्रयोग करने हेतु जांच अधिकारी अधिकृत करते हैं।

[क्रमांक : गो. कक्ष/कि-11022/142/90-93]

व्याम चन्द्र गुप्ता, उप महालेखाकार (प्रशासन)

Jaipur, the 23rd March, 1993

S.O. 713.—Whereas the Accountant General (Audit)-II, Rajasthan, Jaipur is of opinion that for the purposes of the departmental inquiry relating to S/Shri Badri Prasad Sharma, Asstt. Audit Officer, Ram Swaroop Natani, Section Officer and Bhagwan Sahai Verma, Sr. Auditor, it is necessary to summon as witnesses/call for any document from Shri Kailash Chandra Sharma, Hotel Manager, Goverdhan Niwas Lodging and Boarding, Dhariabad, Distt. Udaipur, Shri Man Singh Solanki, Ex-Tehsildar, Dhariabad, Distt. Udaipur and Shri S. N. Sharma, Ex. Dy. Accountant General/S.R.A.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Departmental Inquiries (Enforcement of Attendance of witnesses and production of Documents) Act, 1972 (18 of 1972). The Accountant General (Audit) II, Rajasthan, Jaipur hereby authorises Shri G. K. Bhatnagar, Dy. Accountant General as the Inquiring Authority to exercise the powers specified in section 5 of the said Act in relation to the above inquiry case.

[No. CC/K. 11022/142/90-93]

V. C. GUPTA, Dy. Accountant General (Admn.)

**केन्द्रीय उत्पाद शुल्क समारोह**

अधिसूचना संख्या 01/1993

नागपुर, 6 मार्च, 1993

का. अ. 714 :- श्री ए. डी. मंगरुलकर अधीनस्थ केन्द्रीय उत्पाद शुल्क समूह "ख" समारोह नागपुर निवर्तन की आयु प्राप्त करने पर दिनांक 28-2-1993 को अपराह्न में शासकीय सेवा से निवृत्त हुए हैं।

[प.सं. 11 (3)/3/92/स्थापना-1/7564]

हरजिंदर सिंह, उपायुक्त (आयुक्त एवं सतर्कता)

**CENTRAL EXCISE COLLECTORATE**

NOTIFICATION NO. 01/93

Nagpur, the 6th March, 1993

S.O. 714.—Shri A. D. Mangrulkar, Superintendent, Central Excise Group 'B' of Nagpur Collectorate having attained the age of Superannuation retired from Government service on 28-02-1993 in the Afternoon.

[C. No. II(3)3/92/Estt.1/7564]

HARJINDER SINGH, Dy. Collector (Per. &amp; Vig.)

**कोयला मंत्रालय**

आदेश

नई दिल्ली, 22 फरवरी, 1993

का.अ. 715—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) की (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) धारा 9 की उपधारा (1) के अधीन निकासी गई भारत सरकार के कोयला मंत्रालय की अधिसूचना सं. का.अ. 1899, तारीख 2 जुलाई, 1992 के, भारत के राजपत्र, भाग 2, खंड 3 उपखंड (ii) तारीख 18 जुलाई, में प्रकाशित होने पर, उक्त अधिसूचना संलग्न अनुसूची क और ख में वर्णित भूमि या ऐसी भूमि में या उस पर अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी शिखरों से मुक्त होकर, आधिकारिक रूप से केन्द्रीय सरकार में निहित हो गई है।

और केन्द्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोयलफील्ड्स लिमिटेड, बिलासपुर (मध्य प्रदेश) (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए राजीमंड है।

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि इस प्रकार निहित उक्त भूमि या ऐसी भूमि में या उस पर के अधिकार, तारीख 18 जुलाई, 1992 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :-

- (1) सरकारी कंपनी, उक्त अधिनियम के उपबन्धों के अधीन अधिरोपित अधिकार, धातु, नुकसानी और वैसी ही मदों की वास्तविकता के लिए सभी संदायों की केन्द्रीय सरकार की प्रतिपूर्ति करेगी।
- (2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अधिवारण करने के प्रयोजन के लिए एक अधिकार का गठन किया जाएगा तथा ऐसे किसी अधिकारण और ऐसे अधिकारण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी वहन करेगी और इसी प्रकार, इस प्रकार निहित उक्त भूमि में या उस

पर के अधिकारों के लिए या उनके संबंध में सभी विधिक कार्यवाहियों, जैसे अपील, आदि की वास्तविकता सभी व्यय भी, सरकारी कंपनी वहन करेगी।

- (3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदाधिकारियों की, ऐसे किसी अन्य व्यय के संबंध में, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदाधिकारियों द्वारा या उनके विरुद्ध किसी कार्यवाहियों के संबंध में आवश्यक हो, क्षतिपूर्ति करेगी।
- (4) सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त अधिकार किसी अन्य व्यक्ति को अन्तर्गत करने की शक्ति नहीं होगी; और
- (5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हों, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं, पालन करेगी।

[सं. 43015/2/89-एल.एस.डब्ल्यू.]

बी.डी. राव, अवर सचिव

**MINISTRY OF COAL****ORDER**

New Delhi, the 22nd February, 1993

S.O. 715.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal No. S.O. 1899 dated the 2nd July, 1992 in the Gazette of India, Part II, Section 3, sub-section (ii) dated the 18th July 1992 issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and rights in or over such lands as described in the Schedule 'A' and 'B' appended to the said notification (hereinafter referred to as the said lands) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas the Central Government is satisfied that the South Eastern Coalfields Limited, Bilaspur (Madhya Pradesh) (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the lands and rights in or over the said lands so vested shall, with effect from 18th July 1992, instead of continuing to so vest in the Central Government, vest in the Government Company, subject to the following terms and conditions, namely:—

- (1) the Government Company shall reimburse the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act,
- (2) a tribunal shall be constituted for the purpose of determining the amounts payable to the Central Government by the Government Company under condition (1), and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeal etc. for or in connection with rights, in or over the said lands, so vesting shall also be borne by the Government Company;
- (3) the Government Company shall indemnify the Central Government or its Officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its Officials regarding the rights in or over the said lands so vesting;

(4) the Government Company shall have no power to transfer the said lands to any other person without the previous approval of the Central Government; and

(5) the Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[No. 43015/2/89-LSW]

B. B. RAO, Under Secy.

नई दिल्ली, 22 मार्च, 1993

का.आ. 716.— केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) के अधीन भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii), तारीख 6 अप्रैल, 1991 में प्रकाशित भारत सरकार के तत्कालीन ऊर्जा मंत्रालय (कोयला विभाग) की अधिसूचना का.आ. सं. 960 तारीख 21 मार्च, 1991 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 394 545 हैक्टर (लगभग) या 974.92 एकड़ (लगभग) है, कोयले का पूर्वोक्षण करने के अपने आशय की सूचना दी थी;

और उक्त भूमि की बाबत, उक्त अधिनियम की धारा 7 की उपधारा (1) के अधीन कोई सूचना नहीं दी गई है;

अतः, अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 6 अप्रैल, 1993 को प्रारम्भ होने वाली एक और वर्ष की अवधि को ऐसी अवधि के रूप में विहित करती है, जिसके भीतर केन्द्रीय सरकार, निम्नलिखित अनुसूची में विनिर्दिष्ट भूमि या ऐसी भूमि में या उन पर के अधिकारों का अर्जन करने के अपने आशय की सूचना दे सकेगी :—

#### अनुसूची

मलगांव ब्लॉक (दुर्गा विवृत शान)

कोरबा कोलफील्ड

जिला बिलासपुर (मध्य प्रदेश)

रेखांक सं. एस.ई.सी.एल. बी.एस.सी./ए.सी.ई./एल.ई.आर./लैंड/82, तारीख 16 नवम्बर, 1990 (पूर्वोक्षण के लिए अधिसूचित की जाने वाली भूमि दर्शाते हुए)

क्र.सं.	ग्राम	हल्का सं.	तहसील	जिला	क्षेत्र हैक्टरों में	टिप्पणियां
1.	अमगांव	29	कटघोरा	बिलासपुर	329.987	पूर्ण
2.	मलगांव	28	कटघोरा	बिलासपुर	064.558	भाग
कुल क्षेत्र : 394.545 हैक्टर (लगभग)						
या 974.92 एकड़ (लगभग)						

सीमा वर्णन :—

क—ख रेखा, अमगांव—बरेली ग्रामों की सम्मिलित सीमा पर बिन्दु “क” से आरम्भ होती है और अमगांव—बरेली अमगांव—पोंडो की सम्मिलित सीमा के साथ-साथ जाती है और बिन्दु “ख” पर मिलती है।

ख—ग रेखा अमगांव, मलगांव ग्रामों की दक्षिणी सीमा के साथ साथ जाती है और बिन्दु “ग” पर मिलती है।

ग—क रेखा मसंगांव ग्राम से होकर जाती है, फिर भागतः मलगांव—अमगांव की सम्मिलित सीमा के साथ-साथ जाती है और आरम्भिक बिन्दु “क” पर मिलती है।

[फा.सं. 43015/24/90-एल.ए.स.डब्ल्यू.]

बी.बी. राव, अवसर सचिव

New Delhi, the 22nd March, 1993

S.O. 716 :—Whereas by the notification of the Government of India in the then Ministry of Energy (Department of Coal) number S.O. 960 dated the 21st March, 1991 issued under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in Part-II, Section 3, Sub-Section (ii) of the Gazette of India dated the

6th April, 1991, the Central Government gave notice of its intention to prospect for coal in lands measuring 394.545 hectares (approximately) or 974.92 acres (approximately) in the locality specified in the Schedule appended thereto;

And whereas in respect of the said lands, no notice under sub-section (1) of section 7 of the said Act has been given;

Now, Therefore, in exercise of the powers conferred by the sub-section (1) of section 7 of the said Act, the Central Government hereby specifies a further period of one year commencing from the 6th April, 1993 as the period within which the Central Government may give notice of its intention to acquire the lands or any rights in or over such lands, as specified in the Schedule below :—

**SCHEDULE**  
**MALGAON BLOCK (DURGA OPENCAST)**  
**KORBA COALFIELD**  
**DISTRICT—BILASPUR (MADHYA PRADESH)**

Plan No. SECL/BSP/ACME/LER/Land/82  
dated 16th November, 1990.

(Showing the land notified for prospecting).

Serial No.	Village	Halka number	Tahsil	District	Area in hectares	Remarks
1.	Amgaon	29	Katghora	Bilaspur	329.987	Full
2.	Malgaon	28	Kathgora	Bilaspur	064.558	Part
Total					394.545 hectares (approximately) or 974.92 acres (approximately)	

**Boundary Description :—**

- A—B** Line starts from point 'A' on the common boundary of villages Amgaon—Bareli and passes along the common boundary of villages Amgaon-Bareli, Amgaon-Pondi and meets at point 'B'.
- B—C** Line passes along the southern boundary of villages Amgaon, Malgaon and meets at point 'C'.
- C—A** Line passes through village Malgaon then partly along the common boundary of Amgaon—Bareli and meets at the starting point 'A'.

[No. 43015/24/90—LSW]  
B.B. RAO, Under Secy.

**मानव संसाधन विकास मंत्रालय**

(महिला एवं बाल विकास विभाग)

पूर्व विन्यास अधिनियम, 1890 (1890 का 6) के मामले में  
राष्ट्रीय बाल कोष, नई दिल्ली के मामले में

नई दिल्ली, 17 मार्च, 1993

का.भा. 717.--राष्ट्रीय बाल कोष, नई दिल्ली के प्रबन्ध बोर्ड द्वारा किए धावेबन पर और उनकी सहमति से पूर्व विन्यास अधिनियम, 1890 (1890 का 6) के खण्ड 10(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा आदेश देती है कि नीचे दिए गए व्योरे के अनुसार रु. 48,12,088/- (अड़तालिस लाख बारह हजार अठ्ठासी मात्र) (पचास लाख छूट कीमत की राशि) स्टेट बैंक ऑफ पटियाला, सूर्या नगर शाखा, गाजियाबाद, में 3 महीनों के लिए सर्टिफिकेट ऑफ डिपॉजिट योजना के अन्तर्गत 15.62% की व्याज दर से 27-2-93 को पुनः निवेश की गई :—

क्रमसं.	राशि	पिछले निवेश की तारीख	भुगतान की तारीख	प्रतिपूर्तियां
1.	40,00,000	27-11-92	27-02-93	
2.	7,00,000	31-12-92	27-02-93	
3.	1,12,088	--	--	राष्ट्रीय बाल कोष की उप-लब्ध बकाया राशि में से।

2. भारत सरकार के तत्कालीन समाज कल्याण विभाग के दिनांक 2 मार्च, 1979 के समय समय पर यथा संशोधित सा.भा. 120(ई) की प्राधसूचना के साथ प्रकाशित राष्ट्रीय बाल कोष, नई दिल्ली के संचालन की योजना के अनुसार प्रयोग किए जाने हेतु उपरोक्त खाता भारतीय पूर्व विन्यास के खर्चा की के नाम होगा।

[मं. 13-4/93 टी.भार.-II]

भार. एल. सीता, उप निदेशक

MINISTRY OF HUMAN RESOURCE DEVELOPMENT  
(Department of Women and Child Development)  
IN THE MATTER OF THE CHARITABLE ENDOWMENTS ACT 1890  
(6 of 1890)

IN THE MATTER OF THE NATIONAL CHILDREN'S FUND, NEW DELHI

New Delhi, the 17th March, 1993

S.O. 717:—On the application made by and with the concurrence of the Board of Management of the National Children's Fund, New Delhi, as in exercise of the powers conferred by Section 10(2) of the Charitable Endowments Act 1890 (6 of 1890), the Central Government do hereby order that the sum of Rs. 48,12,088/ (Rupees forty eight lakh twelve thousand and eightyeight only) (discusounted value of Rs. 50,00,000/ (Rupees fifty lakh only) as per particulars given below be re-invested in Certificate of Deposit Scheme for threos months in Stato Bank of Patiala, Surya Nagar Branch, Ghaziabad at the rate of Interest 15.62 % per annum w.e.f. 27-2-93.

Sl. No.	Amount	Date of previous Investmont	Date of Maturity	Remarks
1.	Rs. 40,00,000/-	27-11-92	27-02-93	
2.	Rs. 7,00,000/-	31-12-92	27-02-93	
3.	Rs. 1,12,088/-	..	..	From cash balance of National Children's Fund.

2. The above account shall vest in the treasurer of charitable endowments of India to be held by him for being applied in accordance with the scheme for the administration of the National Children's Fund, New Delhi, published with the Notification of the Government of India in the then Department of Social Welfare No. S.O. 120 (E) dated the 2nd March, 1979 as amended from time to time.

[F. No. 13—4/93—TR—II]

R.L. MEENA, Dy. Director.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 23 मार्च, 1993

का.आ. 718.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राष्ट्रपति, तारीख 16 जनवरी, 1960 में प्रकाशित भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की अधिसूचना सं. का.आ. 138, तारीख 9 जनवरी, 1960 में निम्नलिखित और संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खंड (क) के अधीन नामनिर्देशित " शीर्षक के नीचे क्रम संख्यांक 14 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्यांक और प्रविष्टियाँ रखी जाएंगी, अर्थात्:—

"14. डा. केतन देसाई

मूल विज्ञान का सह-प्राचार्य,

6. पूनम अपार्टमेंट्स पालिटेक्निक,

अम्बावाड़ी, अहमदाबाद-380015"

[सं. बी. 11013/2/92-एम.ई. (यू.जी.)]

आर. विश्वकुमारी, डेस्क अधिकारी

MINISTRY OF HEALTH & FAMILY WELFARE

(Department of Health)

New Delhi, the 23rd March, 1993

S.O. 718.—In exercise of the powers conferred by sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government hereby makes

the following further amendments in the notification of the Government of India in the erstwhile Ministry of Health, published vide S.O. 138, dated the 9th January, 1960 in the Gazette of India dated the 16th January, 1960, namely:—

In the said notification, under the heading "Nominated under clause (a) of sub-section (1) of section 3", against serial number 14 and the entries relating thereto, the following serial number and entries shall be substituted, namely:—

"14. Dr. Ketan Desai,  
Associate Professor of Urology,  
6. Poonam Apartments,  
Polytechnic,  
Ambavadi,  
Ahmedabad-380015."

[No. V. 11013/2/92-ME(UG)]

R. VIJAYAKUMARI, Desk Officer

जनकपुर विकास मंत्रालय

(दिल्ली प्रभाग)

नई दिल्ली, 20 जनवरी, 1993

का.आ. 719.—यतः निम्नांकित क्षेत्रों के बारे में कुछ संशोधन, विदेशी केन्द्रीय सरकार अर्पणित क्षेत्रों के बारे में दिल्ली युद्ध योजना/क्षेत्रीय विकास योजना में प्रस्तावित करती है तथा जिसे किसी विधायक अधिनियम 1957 (1957 का 61) की धारा 44 के प्रावधानों के अनुसार दिनांक 23-4-92 के नोटिस सं. एक 20(12)/85-एन पी द्वारा प्रकाशित किए गए थे जिसमें उक्त अधिनियम की धारा 11-क की उपधारा (3) में अपेक्षित आपत्तियों/मुद्दाव, उक्त नोटिस की तारीख के 30 दिन के अग्रिम में आमंत्रित किए गए थे।

और यतः प्रस्तावित संशोधनों के बारे में कोई आपत्तियाँ और सुझाव प्राप्त नहीं हुए हैं।

और यतः केन्द्रीय सरकार ने दिल्ली बृहद योजना/क्षेत्रीय विकास योजना में संशोधन करने का निर्णय किया है।

अतः अत्र केन्द्रीय सरकार, उक्त अधिनियम की धारा 11-क की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से दिल्ली की उक्त बृहद योजना में एतद्वारा निम्नलिखित संशोधन करने का निर्णय किया है।

संशोधन:

"8.1 हेक्टेयर (20 एकड़) क्षेत्र में से लगभग 3.7 हेक्टेयर (8.87 एकड़) क्षेत्र, जो उत्तर में विद्यमान दिल्ली नगर निगम पारोपिक केन्द्र, दक्षिण में पृथ्वी गाँव, पश्चिम में दिल्ली बवाना रोड और पूर्व में गंगा टोली रेस्ट हाउस से घिरा हुआ है, का भूमि उपयोग "ग्रामीण उपयोग" से "सार्वजनिक एवं अर्ध-सार्वजनिक सुविधाओं" (100 बिस्तर के अस्पताल) में परिवर्तित किया जाना प्रस्तावित है।"

[सं. के-13011/6/87-डीडी II/1/ए/1बी]

एस. सी. सागर, अवर सचिव

MINISTRY OF URBAN DEVELOPMENT

(Delhi Division)

New Delhi, the 20th January, 1993

S.O. 719.—Whereas certain modifications, which the Central Government proposes to make in the Master Plan for Delhi/Zonal Development Plan regarding the areas mentioned hereunder were published with Notice No. F. 20(12)/85-MP, dated 23rd April, 1992 in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said notice;

And whereas no objections and suggestions have been received with regard to the said proposed modification;

And whereas the Central Government have decided to modify the Master Plan for Delhi/Zonal Development Plan;

Now therefore, in exercise of the powers conferred by sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi with effect from the date of publication of this Notification in the Gazette of India.

MODIFICATION :

"The land use of an area measuring about 3.7 hect. (8.87 acres) out of 8.1 hect. (20 acres) and bounded by existing MCD physical centre in the North, Pothkhurd village in the South Delhi Bawana Road in the West and Ganga Toli Rest House in the East, is proposed to be changed from 'rural use' to 'public and semi-public facilities' (100 bedded hospital)."

[No. K-13011/6/87-DDIIA/VA/IB]

S. C. SAGAR, Under Secy.

नई दिल्ली, 23 मार्च, 1993

का.आ. 720—यतः निम्नलिखित क्षेत्रों के बारे में कुछ संशोधन, जिन्हें केन्द्रीय सरकार अध्यावर्णित क्षेत्रों के बारे में दिल्ली बृहद योजना/क्षेत्रीय विकास योजना में प्रस्तावित करती है तथा जिसे दिल्ली विकास अधिनियम, 1957 (1957 का 61) की धारा 44 के प्रावधानों के तहत 27-6-92 के नोटिस संख्याएँ एफ 20(5)/91-एमपी द्वारा प्रकाशित किए गए थे जिसमें उक्त अधिनियम की धारा 11-क की (ए) उपधारा (3) में उल्लिखित आपत्तियों/सुझाव, उक्त नोटिस की तारीख के 30 दिन की अवधि में प्रस्तुत किए गए थे।

और यतः प्रस्तावित संशोधनों के बारे में कोई आपत्तियाँ और सुझाव प्राप्त नहीं हुए हैं।

और यतः केन्द्रीय सरकार के दिल्ली बृहद योजना/क्षेत्रीय विकास योजना में संशोधन करने का निर्णय किया है।

अतः अत्र केन्द्रीय सरकार, उक्त अधिनियम की धारा 11-क की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से दिल्ली की उक्त बृहद योजना में एतद्वारा निम्नलिखित संशोधन करने का निर्णय किया है।

संशोधन:

"उप-जोन-एच-7 में पड़ने वाले और उत्तर पश्चिम तथा उत्तर-पूर्व में मुल्तानपुर मिर्जा गाँव तथा प्राथमिक विद्यालय से, दक्षिण पश्चिम में सोजुदा गाँव से, और दक्षिण पूर्व में मंगोलपुरी औद्योगिक योजना चरण-1 से घिरे लगभग 2.30 हेक्टेयर (5.63 एकड़) क्षेत्र के भूमि उपयोग को आवासीय उपयोग से ((सार्वजनिक एवं अर्ध-सार्वजनिक सुविधाओं (श्मशान/कब्रिस्तान एवं सीमेंटरी) में बदलने का प्रस्ताव है।"

[सं. के-13011/8/92-डीडी/1बी]

एस.सी. सागर, अवर सचिव

New Delhi, the 23rd March, 1993

S.O. 720.—Whereas certain modifications, which the Central Government proposes to make in the Master Plan for Delhi/Zonal Development Plan regarding the areas mentioned hereunder were published with Notice No. F. 20(5)/91-MP dated 27th June, 1992 in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said Notice;

And whereas no objections/suggestions have been received with regard to the said proposed modification;

And whereas the Central Government have decided to modify the Master Plan for Delhi/Zonal Development Plan;

Now therefore, in exercise of the powers conferred by sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi w.e.f. the date of publication of this Notification in the Gazette of India.

MODIFICATION :

"The land use of an area, measuring about 2.30 ha. (5.68 acres) falling in sub-zone H-7 bounded by Sulatanpur Mazra Village and Primary School in the North-West and North-East, existing drain in the South-West and Mangolpuri Industrial Scheme Phase-I in the South-East, is proposed to be changed from 'residential use' to public & semi-public facilities' (Cremation Ground/Burial ground & cemetery)."

[No. K-13011/8/92-DDIB]

S. C. SAGAR, Under Secy.

(सम्पदा निदेशालय)

नई दिल्ली, 18 मार्च, 1993

का.आ. 721—राष्ट्रपति मूल नियमों के नियम 45 के उपबन्धों के अनुसरण में निदेश देने है कि सरकारी निवास स्थान आवंटन (दिल्ली में माधारण पूल) नियम, 1963 (जिन्हें इनमें हमने पश्चात् "उक्त नियम" कहा गया है) यथा आवश्यक परिवर्तन सहित निम्नलिखित उपबन्धों के अधीन रहते हुए कोचीन में सरकारी निवास स्थानों के आवंटन को लागू होने पर— उक्त नियमों से—

1. "दिल्ली" शब्द के स्थान पर जहाँ कहीं वह आता है "कोचीन" शब्द रखा जाएगा

2. "प्रभाग 26-ख" शीर्षक के नीचे पहले पैरा में "या दिल्ली प्रशासन" शब्दों का लोप किया जाएगा

3. अनुसूचक नियम 317-ख-1(1) और (2) के स्थान पर निम्नलिखित रखा जाएगा अर्थात्:—

"अनुसूचक नियम 317 ख-1(1) इस प्रभाग के नियमों का नाम सरकारी निवास स्थान आबंटन (कोचीन में साधारण पूल) नियम, 1992 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

4. अनुसूचक नियम 317-ख-2 में—

खण्ड "ग" के स्थान पर निम्नलिखित रखा जाएगा अर्थात्

(ग) "कोचीन" से कोचीन नगर नियम की सीमा के भीतर आने वाले और उक्त नगर का शहरी बस्तियों के भीतर आने वाले क्षेत्र भी अभिप्रेत हैं। (ख) खंड (ब) में "दिल्ली प्रशासन से भिन्न" शब्दों का लोप किया जाएगा

5. अनुसूचक नियम 317-ख-8 में उपनियम (1) के खंड (ii) में "या दिल्ली प्रशासन" शब्दों का लोप किया जाएगा।

6. अनुसूचक नियम 317-ख-19 में

(क) "तथा यथास्थिति" सह दिल्ली नगर पालिका समिति या "दिल्ली नगर नियम" शब्दों का लोप किया जाएगा

(ख) "निदेशालय" शब्द के स्थान पर "सहायक निदेशक" शब्द रखे जाएंगे

7. अनुसूचक नियम 317-ख-23 के स्थान पर निम्नलिखित रखा जाएगा अर्थात् "अनुसूचक 317-ख-23 इन नियमों के जारी किए जाने के पहले किए गए आबंटन का बना रहना।

किसी अधिकारी को निवास स्थान के किसी ऐसे विधि माध्य आबंटन के बारे में जो इन नियमों के प्रारम्भ के ठीक पूर्व अस्तित्व में हो यहाँ समझा जाएगा कि वह इन नियमों के अधीन सम्बन्ध रूप से किया गया आबंटन है और उस आबंटन तथा संबंधित अधिकारी के संबंध में इन नियमों के सभी पूर्ववर्ती उपबन्ध लागू होंगे।

8. अनुसूचक नियम 317-ख-26 के पश्चात् अन्त में निम्नलिखित अन्तःस्थापित किया जाएगा अर्थात्:—

"शक्तियों का प्रत्यायोजन:—अनुसूचक नियम 317-ख-127:—

सम्पदा निदेशक लिखित साधारण या विशेष आदेश द्वारा निदेश दे सकता है कि ऐसी शर्तों यदि कोई हों, के अधीन रहते हुए जो आदेश में विनिर्दिष्ट की जाएं, इन नियमों के अधीन उसके द्वारा प्रयोज्य कोई शक्ति अधीक्षण इंजीनियर/कार्यपालक इंजीनियर/सहायक कार्यपालक इंजीनियर/सहायक इंजीनियर केंद्रीय लोक निर्माण विभाग कोचीन या सम्पदा प्रबंधक/सहायक सम्पदा प्रबंधक कोचीन द्वारा भी प्रयोज्य होगी।"

[फा. सं. 12035/12/92-गण-2]

आर. डी. सहाय, उपनिदेशक (सम्पदा)

(Directorate of Estates)

New Delhi, the 18th March, 1993

S.O. 721.—In pursuance of the provisions of rule 45 of the Fundamental Rules, the President hereby directs that the allotment of Government Residence (General Pool in Delhi) Rules, 1963 (hereinafter referred to as the 'said rules') shall

apply mutatis-mutandis to the allotment of Government Residences in Cochin, subject to the following modifications, namely:—

In the said Rules:—

1. for the word "Delhi", wherever it occurs, the word "Cochin" shall be substituted.

2. In the first paragraph, below the heading "Division XXVI-B" the words "or the Delhi Administration" shall be omitted.

3. For SR-317-B-1(1) and (2), the following shall be substituted, namely:—

"SR-317-B-1(1):—The rules in this Division may be called the Allotment of Government Residences (General Pool in Cochin) Rules, 1992.

They shall come into force on the date of their publication in the Official Gazette."

4. In SR-317-B-2:—

(i) for clause (c), the following shall be substituted, namely:—

(c) "Cochin" means the areas within the limits of the Municipal Corporation of Cochin and also the area lying within the Urban Agglomeration of the said city";

(ii) In clause (n), the words "other than Delhi Administration" shall be omitted.

5. In SR-317-B-8, in clause (ii) of sub-rule (1), the words "or the Delhi Administration" shall be omitted.

6. In SR-317-B-19,—

(a) the words "and the New Delhi Municipal Committee or the Municipal Corporation of Delhi as the case may be" shall be omitted.

(b) for the word "Directorate", the words "Assistant Director" shall be substituted.

7. for SR-317-B-23, the following shall be substituted, namely: "CONTINUANCE OF ALLOTMENT MADE PRIOR TO THE ISSUE OF THESE RULES.—SR-317-B-23"—Any valid allotment of a residence to an officer which is subsisting immediately before the commencement of these rules, shall be deemed to be an allotment duly made under these rules and all the preceding provisions of these rules shall apply in relation to that allotment and that officer accordingly."

8. After SR-317-B-26, the following shall be inserted at the end, namely:—"Delegation of powers:—SR-317-B-27:—The Director of Estates may, by general or special order in writing, direct that subject to such conditions, if any, as may be specified in the order, any power exercisable by him under these rules shall be exercisable also by the Superintending Engineer/Executive Engineer/Assistant Executive Engineer/Assistant Engineer, Central Public Works Department, Cochin or Estate Manager/Assistant Estate Manager, Cochin."

[F. No. 12035/12/92-Pol. II]

R. D. SAHAY, Dy. Director of Estates (P)



## भ्रम मंत्रालय

नई दिल्ली, 11 मार्च, 1993

का.प्र. 722:-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. सेंट्रल कोल-फील्ड्स लि. की कुजु कोलियरी के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 10-3-93 को प्राप्त हुआ था।

[सं. एल-24012/77/85-डिविजन(बी)]

एच. सी. गौड़, ईस्क अधिकारी

## MINISTRY OF LABOUR

New Delhi, the 11th March, 1993

S.O. 722.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kuju Colliery of M/s. C.C.L. and their workmen which was received by the Central Government on 10-3-1993.

[No. L-24012/77/85-D.IV(B)]

HARISH GAUR, Desk Officer

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

## PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 5 of 1986

## PARTIES :

Employers in relation to the management of Kuju Colliery of M/s. C.C. Ltd. and their workmen.

## APPEARANCES :

On behalf of the workmen—Shri B. Joshi, Advocate.

On behalf of the employers—Shri R. S. Murthy, Advocate.

STATE : Bihar INDUSTRY : Coal

Dhanbad, the 26th February, 1993

## AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012/77/85-D.IV dated, the 28th/30th December, 1985.

## SCHEDULE

‘Whether the action of the Management of Kuju Colliery of C.C. Ltd., P.O. Kuju, Distt. Hazaribagh in denying Grade B to Shri Devendra Lal, Production Chaser particular when S/Shri A. P. Singh, A. K. Singh, and D. P. Singh have been placed in Grade B is legal and justified? If not, to what relief the workman is entitled?’

2. The present reference is pending for hearing since January, 1986. The record reveals that Shri R. S. Murthy Advocate appeared for the employers and Shri B. Joshi, Advocate for the workmen. The W.S. was also filed on behalf of the workmen as also on behalf of the employers. But I find that no evidence in this case could be taken for years together only because the parties did not appear. Lastly on 1st of February, 1993 the learned counsel of both the parties

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appeared and submitted that parties are not taking any step and so no dispute award be passed. In my opinion the reference cannot be kept pending for years together only for want of taking proper steps by the parties. This will suggest that neither party was interested in the case. In the circumstances, ‘No Dispute’ award is passed.

B. RAM, Presiding Officer

नई दिल्ली, 22 मार्च, 1993

का.प्र. 723:-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोल लि. की दुग्धा कोल वाशरी के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 16-3-93 को प्राप्त हुआ था।

[सं. एल-20012/336/90 धाई धार(कोल-I)]

एच. सी. गौड़, ईस्क अधिकारी

New Delhi, the 22nd March, 1993

S.O. 723.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Dugda Coal Washery of M/s. BCCL and their workmen, which was received by the Central Government on 16-3-1993.

[No. L-20012/336/90-IR (Coal-I)]

HARISH GAUR, Desk Officer

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

## PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 93 of 1991

## PARTIES :

Employers in relation to the management of Dugda Coal Washery of M/s. Bharat Coking Coal Ltd. and their workmen.

## APPEARANCES :

On behalf of the workmen—Shri J. D. Lall, Advocate.

On behalf of the employers—Shri Harihar Nath, Advocate.

STATE : Bihar.

INDUSTRY : Coal Washery.

Dhanbad, the 26th February, 1993

## AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/336/90-I.R. (Coal-I) dated, the 8th April, 1991.

## SCHEDULE

‘Whether the 21 persons indicated in the annexure who were employed through contractors are workmen of the management of Dugda Coal Washery of M/s. BCCL and whether the claim for their departmentalisation and regularisation in service with the said management is justified? If so, to what relief the concerned workmen are entitled to?’

## ANNEXURE

1. Sri Awdesh Kr. Singh
2. Sri Mahabir Thakur
3. Sri Harku Yadav
4. Sri Kinkar Mahto
5. Sri Bodhi Mahto
6. Sri Girdhar Mahto
7. Sri Jadu Mahto
8. Sri Nand Lal Saw
9. Sri Jagdish Mahto
10. Sri Janki Mahto
11. Sri Md. Nizamuddin Ansari
12. Sri Udho Kunwar
13. Sri Mangar Mahto
14. Sri Rajendra Prasad Sharma
15. Sri Bhrigu Nath Chauhan
16. Sri Hari Kishun Yadav
17. Sri Bipin Bihari Singh
18. Sri Bisheswar Verma
19. Sri Hamu Kumar Mandal
20. Sri Bhagwan Nayak
21. Sri Nimai Dutta.

2. The concerned workmen as per schedule to the reference claim for their departmentalisation/regularisation under the management of Dugda Coal Washery of M/s. BCCL on the ground that they are workmen of the management and have been working in the Coal washery since 1981. They as per W.S. have been working under different contractors. The contractors always changed in course of time but the concerned workmen 21 in number never changed and they continued from the very beginning of their employment. It was stated that they were not contract labour and the very employment of contract labour on the job of permanent nature was prohibited. According to the workmen poking of raw coal is a permanent nature of job and it is carried on throughout the year. They also claim to have been working directly under the control and supervision of the washery officials and the implements and the wherewithal for the jobs are also provided by the company. As regarding the payment of wages it was stated that the contractors submit bills, collect money and distribute the wages and they have nothing to do with the supervision and control of the concerned workmen. On these ground it was prayed that the concerned workmen be treated as the worker of the company namely the BCCL.

3. The management filed W.S. and denied the relationship of employer and employee between the concerned workmen and the management and therefore there could have been no industrial dispute within the meaning of Section 2(k) of the I. D. Act. The Steel Authority of India was the owner of the washery which was transferred to BCCL with effect from 1-10-83. While giving historical back ground of the washery it was stated that this was established in the year 1960. This washery unit was so designed as to provide for raw coal hopper in which raw coal is fed and it is conveyed into washing equipment for the purpose of the production of the washed/clean coal. This raw coal hopper function effectively for about 2 decades and it did not require any external agency or the manual worker. According to the management it so happened that due to aging of the plant this raw coal hopper suffered wear and tear and free flow of coal through hopper was hindered. Therefore in order to meet the situation and also to ensure the smooth working of the washery the system of manual poking of raw coal in the hopper was introduced which was a purely temporary measure. In order to accomplish this temporary job the contractors were engaged from time to time through manual worker. The job was very limited and it did not require engagement of 15 workers in a day. It was stated that the management has already taken steps for modification and alteration in the plant to be done by the Central Mine Planning and Design Institute Ltd., Ranchi. After modification there will be no requirement of manual worker or the con-

tractors and in this way it was submitted that the work was purely temporary and engagement of contract labour for such work was not prohibited under the Contract Labour (Regulation and Abolition) Act.

4. While giving parawise reply the management denied engagement of the concerned workmen since 1981. As stated earlier this system of poking of raw coal in the hopper became necessary only for a few years ago. The management admitted change of contractors from time to time but denied continuity of the concerned workmen in the employment. It was further stated that the contractors have of their own control and management over the workmen, and they supplied their own implement to carry out the jobs. It was further stated that the management never appointed nor entrusted any officer for supervision and control over the work of the concerned workmen. It was prayed that the concerned workmen have got no case and the award be passed in favour of the management.

5. The necessary point for consideration is as to whether the concerned workmen can be regularised under the management of BCCL.

6. First of all we will examine whether any relationship of employer and employee ever existed between the concerned workmen and the management? Admittedly, the concerned workmen were not employed by the management nor any appointment letter was issued to them. But the concerned workmen claimed to have been working in Dugda Coal Washery since 1981 under different contractors. They also stated that the contractors always changed but they continued in the employment. We have no paper to show that they are working since 1981. Shri Harkhu Yadav, WW-1 is one of the concerned workmen and he stated that his main function is to poke the coal stored at hopper over head and the coal falling on conveyor are transported to the washery plant. He also stated that their work is supervised by the engineers and supervisor of the company. According to him the contractors neither go to the plant nor do they supervise their work. The main role of the contractors, as stated in the W.S. was to submit bills and to distribute the wages after collecting the same from the company. In cross-examination the witness has denied that the management has nothing to do with their payment. At this stage reference may be made to the evidence of MW-2. Shri M. P. Singh, Dy. Personnel Manager, Dugda Coal Washery. He has proved certain wage sheets through which the concerned workmen were paid their wages. They have been marked Ext. W-7 to W-7/2. Those wage sheets also bear signature of this witness. The question is if the concerned workmen are the contractor labour and the management has nothing to do with their payment then why on this earth the payment is required to be made in presence of the officers of the Colliery and what for they will sign the bills. The most natural conclusion will be that bills are signed by the officials of the management in token of the proof that wages were really paid to the labourers in their presence. The payment in presence of the officials signified one of the test of control and supervision. On the wage sheets there is certificate to the effect that payment for certain period was made in presence of the officer. The word "supervision and control" should not be read in its very narrow compass. This does not mean that supervision must be done of the work by physical presence and apart from that it solely depend upon the nature of the work. There may be work which may not require strict supervision in real sense of the terms though the control may be of the management. As we find in the present case the poking of raw coal at the hopper is done by the labour and it can hardly need any supervision. Besides this such work is done at the plant and I fear if the contractors can be allowed to attend the plant for the purpose of supervision.

7. The evidence of the witness (MW-2) will definitely unfold another test of control and supervision. He has proved attendance register for the year 1987 maintained by the contractor for their labour. It has been marked Ext. W-8. The witness stated and proved that Attendance Register was signed by Shri K. N. Pandey, Assistant Labour Welfare Officer, Dugda Coal Washery. Though the register was retained and maintained by the contractor but it was signed by the officials of the washery. What does this signify? Why the Welfare Officer will be signing and making any endorsement if the management had no concern with the concerned work-

men. This means the control and supervision over the concerned workmen rested with the management and the contractors more or less were working as middle man of the management. The nature and extent of control varies from industry to industry and it cannot by its very nature be precisely defined. For the reasons stated above I am to hold that there was relationship of employer and employee between the concerned workmen and the management of Dugda Coal Washery and it has been well established. Since the relationship of employer and employee existed between the concerned workmen and the management of Dugda Coal Washery the reference cannot be called incompetent as canvassed by the learned counsel of the management.

8. It is the case of the workmen that the job of poking coal at the hopper is perennial in nature and the concerned workmen have been working regularly for the last several years. The management in its W.S. stated that the Dugda Coal Washery was established in 1960 and for more than 2 decade the raw coal hopper function efficiently and effectively and the job relating to processing of raw coal through hopper did not require any external agency or manual worker but due to aging of the plant the system of manual poking was introduced recently and purely as temporary measure. It was also stated that corrective action is being taken. By such statement the management wanted to show that this poking business was taken up after 1980. However the concerned workmen claim to have been working since 1981. Here I may refer to the evidence of two witnesses for the management who appear to have contradicted each other. MW-1 Shri Niranjan Kumar Ghosh stated that poking work is being done since 1982-83 and in that way he supported the stand of the management but MW-2 stated that poking system of coal came into practice sometimes in the year 1974-75 and it is still in existence. Even supposing that the system was introduced in 1982 still it can be said that it is continuing regularly for the last 10 years and so on. We have no paper to show that any corrective measure has already been taken with the Central Mine Planning and Design Institute for renovation of the plant. According to MW-1 the problem has been taken up for last 6 years but he had no occasion to see the blue print of the CMPDIL unit. It may be noted that continuity of work for years together determine the character of the work whether it is permanent or temporary in nature. The concerned workmen have proved wagesheets of several months for the years 1986, 1988, 1991 and 1992 (Ext. W-1) series. The wagesheets right from January to September, 1987 and days employed showing that the concerned workmen have been doing regularly during this period except Bhagwan Nayak and Nemai Dutta. On conclusion they seemed to have worked for about 150 days during these period of 7 months in the year 1988.

9. The attendance Register (Ext. W-8) is for the year 1986-1987. Particularly in the year 1987 they worked right from January to September, 1987 and days employed varied from 15 days to 25 days in a month. Again the names of Bhagwan Nayak and Nemai Dutta do not figure in the register suggesting that they did not work regularly. No doubt the burden rests upon the concerned workmen to prove their continuity in the employment but we cannot be unmindful of the fact that the management is the custodian of the document. Whatever the documents have been proved on behalf of the workmen, they prove that the work was perennial in nature and they worked regularly for months together in different years.

10. Continuous service has been defined under Section 25-B of the I.D. Act, 1947 and it is not necessary that 12 calendar months have to be counted from January to December. The register shows that the concerned workmen worked from September, 1986 to September, 1987 continuously covering for more than 12 months. During this period of 12 months the concerned workmen except Bhagwan Nayak and Nemai Dutta had completed 240 days. It may be repeated again that the names of these two workmen did not appear in the register. This register was maintained by the contractor and not mentioning the names of these two concerned workmen will simply suggest that they really did not work continuously. For the sake of calculating the working days commencing from October, 1986 to September, 1987 let us take the example Shri Awadesh Kumar Singh at Sl. No. 1 and Mahabir Thakur of Sl. No. 2. Shri Awadesh Kumar Singh

completed 262 days and Shri Mahabir Thakur completed 281 days in the calendar year apart from the leave granted to them. Similarly other concerned workmen also completed 240 days in a year inclusive of the leave granted to them. So I am to hold that the concerned workmen except 2 as referred to above completed 240 days in perennial nature of job. Admittedly, the contract labour cannot be allowed to work in perennial nature of work and so it will be deemed that the concerned workmen were employees of the management. Since they have been working for the last several years they also deserve their regularisation in the employment of the management. The case has to be decided on the merit of each case and the Court cannot go into the question whether the management has already excess or less labour.

11. The concerned workmen have got proved a copy of memorandum of Settlement which was made effective with effect from 1-9-82. Under Chapter 8 Clause 8.1.1 provides that the industry shall not employ labour through contractors or engage contract labour on job of permanent and perennial nature. Ext. W-9 is the record notes of discussion held with the Coal Washeries workers union on 27-4-92. The main point raised by the Union representative was that the poking of raw coal hoppers at Dugda Coal Washery was a continuous job being done by the contract labour for many years which is a part of plant production and as such the labourers should be absorbed on the company's roll. In the discussion it was agreed that OGM (W) will get the matter examined whether the nature of work requires continuous employment of contract labour and whether this job is required to continue on regular basis. It was also stated that further action in the matter will be taken on receipt of the detailed report. We have no paper to show as to whether the matter was ever examined by the CGM (W) or not. This is Ext. W-9. Similarly Ext. W-9/1 and W-9/2 are also the record notes of discussion held on different dates but nothing has been done as yet. Ext. W-2 series are the interview letters issued to the concerned workmen for their appointment as General Mazdoor in Dugda Coal Washery. It is a case of the concerned workmen that other workmen were taken in but their case was not considered. Ext. W-4 and W-5 are photo copies of gate pass for the labourers engaged for the work removal of coal through D-1 reclaim hoppers.

12. I find that some documents have also been filed on behalf of the management. Ext. M-1, M-1/1 and M-2 are the photo copies of the letters to M/s. Prabhat Enterprises contractors extending the period of contract for certain period. Ext. M-3 and M-4 are the letters to M/s. Prabhat Enterprises and Dugda Construction entrusting the work to be done by them. It has been noted in the letter that the contractors will be liable to pay the wages to their workmen deployed by them as per Minimum Wages Act and payment of wages Act, 1936 or the rate of wages currently prevalent at Dugda Coal Washery whichever is higher. I may mention here that the matter has already been discussed at length as to how the management was the supervisor of the concerned workmen. Though the wages were paid by the contractors but it was paid under the presence of the washery officials. Even the attendance register was signed by the Welfare Officer of the Washery. Ext. M-5 is also a letter requesting M/s. Dugda Construction to continue the job of cleaning and poking of raw coal hopper. Ext. M-6 to M-9 are the photo copy of the annual return. Ext. M-10 is also a letter to M/s. Dugda Construction Co. extending the period of contract. Ext. M-11 is the licence and M-12 is the wagesheet of the concerned workmen for the month of April, May, 1992. Ext. M-13 is the photo copy of the transfer order showing transfer of the Coal Washery to M/s. BCCL.

13. I have examined various aspects of the matter and I am to hold that the nature of the job was perennial and the concerned workmen had been working for the last several years and they completed more than 240 days in a calendar year. On these grounds they are entitled for their departmentalisation/regularisation. The management is thus directed to regularise the concerned workmen except Bhagwan Nayak and Nemai Dutta on the post of General Mazdoor within 2 months from the date of publication of the Award.

This is my Award.

B. RAM, Presiding Officer

नई दिल्ली, 22 मार्च, 1993

का.प्र. 724 :—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसूचन में केन्द्रीय सरकार, में भारत कोकिंग कोल लि. की खारखारी कोलियरी के प्रबन्धन से संबन्धित नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 16-3-93 को प्राप्त हुआ था।

[सं. एल-20012/162/84-डी-3(ए)आई मार(कोल-1)]

एच. सी. गौड़, डेस्क अधिकारी

New Delhi, the 22nd March, 1993

S.O. 724.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kharkharee Colliery of M/s. BCCCL and their workmen which was received by the Central Government on 16-3-93.

[No. L-20012/162/84-D.III(A)]

HARISH GAUR, Desk Officer

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

## PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 47 OF 1984

## PARTIES :

Employers in relation to the management of Kharkharee Colliery of M/s. Bharat Coking Coal Limited and their workmen.

## APPEARANCES :

On behalf of the workmen.—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers.—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, Dhanbad, the 9th March, 1993

## AWARD

The Govt. of India, Ministry of Labour and Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(162)/84-D.III(A), dated, the 3rd August, 1984.

## SCHEDULE

"Whether the action of the management of Kharkharee Colliery of Messrs. Bharat Coking Coal Limited, in denying employment to the workmen listed in the Annexure below, without taking disciplinary action for their alleged disobedience to transfer orders, was justified ? If not, to what relief these workmen are entitled ?"

Sl.No. Name of the workmen

1. Ajlu Gope
2. Samor Rajwar
3. Hamid Mia
4. Juman Mia

5. Hanif Mia
6. Kalam Mia
7. Amin Mia
8. Manbhula Deshwali
9. Bhaduri Manjhi
10. Mahabir Mahato
11. Ratan Singh
12. Budh Singh
13. Bhim Manjhi
14. Ratan Bouri
15. Jhagu Mahato
16. Harish Chandra Prasad
17. Jugal Das
18. Raju Ray
19. Nagar Napit
20. Dinu Turi
21. Banku Turi
22. Panchu Bouri
23. Banswari Rajbhar
24. Sinat Rajbhar
25. Sahadeb Bouri
26. Dhiren Bouri
27. Bedi Majhi
28. Pusa Rai
29. Lokhi Rai
30. Galdu Rai
31. Dalu Rai
32. Sahadat Mia
33. Mansa Bhunia
34. Jitu Rai
35. Nandu Mahto
36. Khudu Rajwar
37. Mahanand Rajwar
38. Nakul Rajwar
39. Baneshwar Manjhi
40. Bajun Manjhi
41. Chaitan Manjhi
42. Kalpu Napit
43. Bharat Manjhi
44. Gayaram Manjhi
45. Sikari Manjhi
46. Bhim Manjhi
47. Madhu Napit
48. Monsa Manjhi
49. Hopna Manjhi
50. Paltu Mahato
51. Srikantha Deshwali
52. Jogta Mahato
53. Adhlu Gope.

2. The action of the management of Kharkharee Colliery of M/s. B.C.C.L. denying employment to the concerned workmen without taking disciplinary action for the alleged disobedience of transfer order has been challenged in this reference.

3. The concerned workmen claims to be the permanent workmen of Kharkharee Colliery appointed by the erstwhile employer. The management of Kharkharee Colliery issued transfer order to the concerned workmen directing them to join Madhuband Colliery. According to the workmen no

release order was ever issued to them. They stated through their W.S. that they did not join Madhuband colliery for they were likely to be deployed in the incline wherein a number of workmen were reported to have lost their lives on account of roof fall. Therefore the concerned workmen wanted to stay at Kharkharee colliery and accordingly they placed their demand before the management for their stay. However, the local management also assured them that they will be allowed to resume their duties at Kharkharee Colliery. It was the case of the union that the order of transfer from Kharkharee to Madhuband colliery was illegal motivated and against the provisions of Standing Order. It was further stated that the disobedience of transfer order was a misconduct under the provision of Standing Order but the management neither issued any chargesheet nor conducted any domestic enquiry before denying employment to them.

4. The concerned workmen and their union represented several times for resumption of duty but without any effect and ultimately industrial dispute was raised before the ALC (C), Dhanbad which ended in failure giving rise to the present reference.

5. The management denied the genuineness of the concerned workmen for the reference does not contain identifying details such as father's name, Form B. No. and home address etc. It was stated that only thirteen workmen as named in para-4 of the W. S. having similar names as contained in the annexure of the schedule of reference were working in Kharkharee colliery in 1973 who were transferred to Madhuband colliery. They on being released left the employment after or before joining Madhuband colliery. The management apprehended they also might have joined different colliery and it was difficult for the management to trace out their whereabouts after a lapse of long 10 years. The management asserted that the concerned workmen except 13 as shown in the W. S. were never in the employment of Kharkharee colliery and so the question of their transfer to other collieries or taking any disciplinary action for any disobedience did not arise. In the year 1983 the union demanded employment of 53 persons as per annexure but the management refused to induct strangers and impersonators.

6. It was further submitted that Kharkharee colliery falls within Govindpur Area and Madhuband colliery falls within Barora Area. Since 13 workmen were transferred to Madhuband colliery after their release from Kharkharee colliery, the management of Kharkharee colliery had nothing to do with this regard. Lastly it was submitted that these 13 workmen did not make any representation regarding their transfer order. When they were transferred by the headquarters from one area to another area there can be no reason to deny employment at Madhuband colliery. There was no reason to remain silent for long 10 years, if at all they had any genuine grievance on the matter of transfer. On these grounds it has been prayed that the award be passed holding that concerned workmen are not entitled to any relief.

7. The question for consideration is whether the concerned workmen are real workmen of Kharkharee colliery and if so whether they are entitled for their employment.

8. Admittedly, the annexure to the schedule of the reference does not identify details of the concerned workmen. They have no appointment letter nor any paper to assert their employment in Kharkharee colliery in 1973. However, the management admitted that 13 persons as per para-4 of the W. S. having similar names as contained in the list of 53 concerned workmen were employees of Kharkharee colliery who were transferred to Madhuband colliery. It was also stated that these 13 persons left their employment on or after joining Madhuband colliery and they never raised any objection to their transfer and thus the management presumed that they joined their new place of posting. Certainly we have no paper to show that these concerned workmen ever filed any representation against their transfer order. At this stage I may pause for a moment to examine relevant names as shown in para-4 of the W. S. All other names except the names of Sheonath Manjhi appears under the reference. Therefore the union can have no say about Sheonath Manjhi. Certainly the name of one Seonath Rajbhar appears in the annexure. But his name can be found in the list of the employees who were transferred from

Kharkharee colliery to Madhuband colliery. The letter along with the list is Ext. M-3. The name of Sibnath Rajbhar appears again Sl. No. 69 of the list. Again I find that the management has filed one register of the coal cutter of Kharkharee colliery and there are also his name appears against Sl. No. 57 and 205. It is very surprising that the name of Shibnath Rajbhar having the same address has been noted twice as against Sl. No. 57 and 205 of the Register (Ext. M-2). Thus I find that Shibnath Manjhi stands nowhere so far this reference is concerned.

9. Ext. W-1 is the minutes of discussion with Bihar Colliery Kamgar Union held on 31-12-81 at Area Office Govindpur area. Perhaps Item No. VI relates to the concerned workmen but no name of any employee has been noted. The learned counsel for the management submitted that the document does not indicate that the matter ever related to the concerned workmen. Though the names of the concerned workmen have not been mentioned but that concerns about the transfer of the employees of Kharkharee colliery to Madhuband colliery and in that way it has got semblance with the concerned workmen. Even if it is supposed that the same was related to the concerned workmen still it is apparent that the matter of employment was raised after about 10 years. We have no paper prior to 1981 to show that the concerned workmen ever represented their case anywhere.

10. Let us examine another aspect of the matter as to whether the concerned workmen were the employees of Kharkharee as colliery or not. According to the management they are strangers and the colliery was not obliged to induct them in the employment. Admittedly some employees of Kharkharee colliery were transferred to Madhuband colliery. Ext. M-1 is the letter dt. 9-6-73 written to the Manager Kharkharee colliery asking him to furnish service particulars of the miner/loader who had been transferred to Madhuband colliery. Ext. M-3 is the letter dt. 3-7-73 in response of the letter dt. 9-6-73. Through the letter the service particulars of the miners/loader transferred to Madhuband colliery was sent. It contained the list of 97 miner/loader who had been transferred to Madhuband colliery. Admittedly, 12 persons having the same name as mentioned in the annexure to the reference were transferred to Madhuband colliery. These persons did not raise any objection to their transfer and the management presumed that they joined their new place of posting. I think the responsibility of the management does not cease here by issuing only the transfer order or the release order. Since the management of Madhuband colliery had entered into correspondence, it was the duty of the management of Kharkharee colliery to see that all the transferred employees joined Madhuband colliery. According to the union they were permanent employees and this fact has not been challenged by the management in specific words. In case of disobedience of any order by a permanent employee he will be departmentally proceeded against as per Standing Order I find that nothing was done by the management in this regard when the concerned workmen did not join their duty

11. Apart from the admitted names as shown in para-4 of the W. S. there are other names also which can be found in the list annexed with Ext. M-3. This list contains the service particulars of the employees who were transferred to Madhuband colliery. A comparative study of this chart with that of the annexure to the reference will disclose that 19 names tallied and were in complete agreement apart from 12 names admitted by the management in para-4 of the W. S. These 19 names may be reproduced as follows. On the left hand side, the Sl. No. of the annexure to the reference has been noted while on the right hand side Sl. of the list sent to Madhuband colliery has been noted

Sl. of the annexure.	Names	Sl. of the list (Ext. M-3)
1	2	3
2.	Somar Rajwar	2
5.	Hanif Mia	7
9.	Bhaduri Manihl	6
10.	Mahabir Mahato	1
14.	Ratan Bourl	5
16.	Harish Chandra Prasad	7

1	2	3
22.	Panchu Bauri	62
23.	Banwari Rajwar	38
24.	Sinat Rajbhar	69
27.	Bedi Majhi	88
29.	Lokhi Rai	35
32.	Sahadat Mia	39
33.	Mansa Bhunia	97
34.	Jitu Rai	96
39.	Baneswar Manjhi	77
41.	Chaitan Manjhi	76
46.	Bhim Manjhi	43
50.	Paltu Mahato	51
52.	Joti Mahato	21

12. Now coming to the register of Coal cutter I find that this register was of the year 1979. It has been marked Ext. M-2. In this register we find further 12 names agreeing with the names as given out in the annexure to the reference. These names are as follows :—On the left hand side Sl. of the annexure is noted while on the right hand side the Sl. of the annexure is noted.

Sl. of the annexure	Name	Sl. of the register (Ext. M-2)
1	2	3
8.	Manbhula Deshwali	46
15.	Jhagu Mahato	510
28.	Pusa Rai	464
31.	Dalu Rai	454
35.	Nandu Mahato	361
36.	Khudu Rajwar	861
37.	Mahanand Rajwar	860
38.	Nakul Rajwar	295 & 460 with different percentage.
44.	Gayaram Manjhi	548 (543)
49.	Hopna Manjhi	493 & 567, 750
42.	Kalpu Napit	157
47.	Madhu Napit	150

In this way we find that these 12 names figure in the register and this will suggest that the persons of these names were the employees of Kharkharee colliery. However, the transfer list does not show that these persons were ever transferred to Madhuband colliery.

13. However, I find that 10 names as given below does not find any mention anywhere in the document filed by the management. The workmen have not produced and proved their transfer letter. Therefore, the persons bearing these names can have no right to be considered for employment by the management. These names are as follows :—

1. Ajlu Gope.
2. Banku Turi.
3. Dhiren Bauri.
4. Galdur Rai.
5. Bajun Manjhi.
6. Bharat Manjhi.
7. Sikari Manjhi.
8. Monsa Manjhi.
9. Srikanta Deshwali.
10. Ashlu Gope.

14. In this way we find that 43 names as named above are to be found in the document of the management showing that they were the employees of Kharkharee colliery. MW-1 is the P.O's clerk and according to him the transfer and release order were issued to all the 96 workmen who were

transferred from Kharkharee colliery to Madhuband colliery. He has proved the letter. He also stated that no workmen transferred to different colliery ever reported that they have not been given work in Madhuband colliery. I find that no paper has been filed to refute this statement of the witness. This suggests that the concerned workmen did not join Madhuband colliery and sat over the matter for about long 10 years. Certainly there is paper to show that a discussion had held between the management and the union sometimes in the month of January, 1982 (Ext. W-1) and there is nothing to show that prior to December 1981 any representation was filed by the workmen. W-1 Sahadat Mia is one of the concerned workman. He has stated that they were in receipt of the transfer order. I find that this transfer order have not been filed by the workmen. He also stated that they went to Madhuband colliery for joining. According to him the mine had already collapsed resulting a good number of casualties and so they did not join Madhuband colliery. They returned back to Kharkharee colliery and expressed their disinclination to join at Madhuband colliery. Here the question arises as to why an employee can refuse to join a particular mine when necessary order had already been issued by the management. If at all they had any grievance they should have placed the same in writing before the management but I find that there is no paper at all.

15. I have considered various aspects of this case. Admittedly, there is no identifying details of the workmen. Only mentioning the name will not entitle them for the employment. Now the duty rests with the management to verify these 43 names as discussed above with the address as noted in the registers of the management. Only those persons will be entitled for employment whose percentage and other details tallies with the record of the management otherwise they will be deemed to be outsider. I have already stated that 10 persons out of 53 names do not figure in any document of the management and so their case cannot be considered by the management. Thus I have to hold that 43 workmen are entitled for consideration of their employment and the management is directed to consider and examine their case within 2 months from the date of the publication of the Award and to give them employment if they are found genuine. In the circumstances of the case there will be no order for any back wages.

This is my Award.

B. RAM, Presiding Officer

नई दिल्ली, 12 मार्च 1993

का.प्र. 725 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक प्राफ इन्डोर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण व श्रम न्यायालय कानपुर के पंचवट को प्रकाशित करने है जो केन्द्रीय सरकार को 11-3-93 को प्राप्त हुआ था।

[संख्या एन-12012/659/86 जी-II(ए)]

एस. के. जैन, उक्त अधिकारी

New Delhi, the 12th March, 1993

S.O. 725.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on the 11-3-93.

[No. L-12012/659/86-D.II(A)]

S. K. JAIN, Desk Officer

## ANNEXURE

BEFORE SRI ARJUN DEV PRESIDING OFFICER  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
CUM-LABOUR COURT PANDU NAGAR, KANPUR  
INDUSTRIAL DISPUTE NO. 135 OF 1987

IN THE MATTER OF DISPUTE BETWEEN :

Sri Harmangal Prasad, State Assistant General Secretary U.P. Bank's Employees Union 36/1 Kailash Mandir, Kanpur.

AND

The Manager, State Bank of Indore, Birhana Road, Kanpur.

## AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-12012/659/86-D. II(A) dated nil has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of State Bank of Indore in terminating the services of Sri Omji Srivastava, clerk and Sri Awadh Narain Srivastava, peon w.e.f. 14-1-84 and 21-10-83 respectively is justified? If not, to what relief are the workmen concerned entitled?"

2. The case of the Union is short is that with a view to deprive workmen from the benefits of modified Sastry Award/Bipartite Settlements and regularisation etc., the bank started a practice of appointing temporary employees for doing the work of regular/permanent nature for periods not exceeding 75 days in terms of Head Office Instructions to the branches. In pursuance of the said policy workman Sri Omji Srivastava, was appointed as a clerk on 5-10-83, and he worked as such upto 13-1-84 for 76 days whereafter, his services were terminated w.e.f. 14-1-84. Similarly the other workman Sri Awadh Narain Srivastava was appointed as peon and he worked as such upto 20-10-83 for 75 days, whereafter, his services were terminated w.e.f. 21-10-83. According to the Union their services were terminated in violation of the provisions of section 25G of the I. D. Act. Even no opportunity was given to the above named two workmen while recruiting fresh hands after termination of their services. Thus the bank also violated the provisions of section 25H of the I. D. Act. There was further violation by the bank of the provisions of paras 493, 495, 507, 516, 522 and 524 of the Sastry Award read with paras 20.7 and 20.8 of the First Bipartite Settlement. The Union has, therefore, prayed for their reinstatement with full back wages and other consequential benefits.

3. The management in defence plead that there does not exist any valid industrial dispute between the parties. As such the reference made by the Central Government, is bad in law. Even the above said two persons are not workmen within the meaning of section 2(s) of the I.D. Act.

4. The management further plead that Sri Omji Srivastava, was temporarily appointed as a clerk/cashier during the period from 5-10-83 to 22-10-83, 10-11-83 to 9-12-83 and 12-12-83 to 13-1-84 at Birhana Road Kanpur branch due to increase in work of temporary nature.

5. Sri Awadh Narain Srivastava, was similarly appointed as peon in leave arrangements at bank's Birhana Road Branch Kanpur from 7-5-83 to 21-6-83, 11-7-83 to 16-7-83 and 3-10-83 to 20-10-83. Both of them were appointed for specified periods. Since they had not worked for 240 days during the period of 12 months before their retrenchment, the provisions of secs. 25G and 25H of the I. D. Act read with Rules 76, 77 and 78 of I. D. (Central) Rules, 1957 would not apply. Their appointments came to an end automatically on the expiry of specified periods for which they were engaged. These days recruitments of permanent hands is done by Banking Service Recruitment Board (hereinafter referred to as BSRB) and so bank could not have made appointments for permanent recruitment as laid down in para 20.8 of the Bipartite Settlement.

6. On 2-12-92, one Sri P. N. Srivastava as father of workman Sri Awadh Narain Srivastava moved an application alleging that his son was missing from 23-9-92.

7. In support of their respective cases both sides have led documentary evidence. Apart from that the Union has examined Sri Omji Srivastava. The details of working as given in the written statement of these two persons tally with the details of working as given in Ext. W-2 and Ext. W-6. Ext. W-2, is the copy of application dt. 17-6-86 from the Assistant General Secretary of the Union to the ALC (C), Kanpur. In it, the period of working of Sri Omji Srivastava, is given. As said earlier the period is the same. From the periods specified it becomes clear that Sri Omji Srivastava had worked for 75 days only with breaks.

8. Ext. W-6 is the copy of certificate dated 9-11-83, issued by an officer of the bank with regard to the working period of Sri Awadh Narain Srivastava. As said above the period is the same. From the specified periods it comes out that he too had worked for 75 days with breaks.

9. I may state here that formal proof of these two documents was waived by Sri S. N. Sharma, the authorised representative for the management.

10. Thus the admitted position which comes out is that both the above named persons had worked for 75 days with breaks. As has been held by me in my award in I. D. No. 94/86 Sri Mani Ram Versus Regional Manager, Central Bank of India, after considering a number of rulings and law on the point, the provisions of section 25G, 25H read with Rules 76, 77 and 78 of I. D. Central Rules 1957 would not apply in such a case. Similarly paras of the Sastry Award on which orders of termination has been assailed by the Union have no application.

11. Hence it is held that the action of the management cannot be assailed. It is further held that the action of the management in terminating the services of Sri Omji Srivastava and Awadh Narain Srivastava w.e.f. 14-1-84 and 21-10-83 respectively is justified. Consequently they are held entitled to no relief.

12. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 15 मार्च, 1993

का.धा. 726 :—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लार्ड कृष्णा बैंक लिमिटेड के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच झगड़ों में निदिष्ट औद्योगिक विवाद में श्रम न्यायालय एग्नाकूलम के पंचाद को प्रकाशित करती है जो केन्द्रीय सरकार को 12-3-93 को प्राप्त हुआ था।

[संख्या एल-12012/134/91-मार्च धार (बी II)]

एस. के. जैन, डेस्क अधिकारी

New Delhi, the 15th March, 1993

S.O. 726.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award of the Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Lord Krishna-Bank Limited and their workmen, which was received by the Central Government on the 12-3-93.

[No. L-12012/134/91 IR (B.III)]

S. K. JAIN, Desk Officer



## ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT  
ERNAKULAM

(Labour Court, Ernakulam)

(Friday, the 26th day of February, 1993)

Present :

Shri M. V. Viswanathan, B.Sc., LL.B., Presiding Officer.  
Industrial Dispute No. 3 of 1991 (C)

BETWEEN :

The Chairman, Lord Krishna Bank Ltd., Central Office,  
P.B. No. 2, Kodungallur-680664, Trichur Dist.  
Kerala.

AND

The General Secretary, Lord Krishna Bank Employees'  
Union, Nairsamajam Building, Chendamangalam-  
683512.

REPRESENTATIONS :

Sri R. Prasanth Kumar, Advocate, M. G. Road,  
Cochin-35. .. For ManagementSri H. B. Shenoy, Advocate, Krishnaswamy Road,  
Cochin-35. .. For Union

## AWARD

This industrial dispute was referred to this Court by the Central Government as per the Order No. L-12012/134/91-IR.B. III. dated 10-5-1991. The dispute is between the management of Lord Krishna Bank Limited and their workmen. The issue referred for consideration is "whether the action of the management of M/s. Lord Krishna Bank Ltd., Kodungallur in not extending halting allowance to their 37 subordinate cadre employees who attended the test on 12th May 1990, and thereafter to the 21 successful candidates who attended interview on 24th May, 1990 at Kondungallur, is justified? If not, to what relief the workmen are entitled to?"

2. In pursuance to the above said reference, notices were served on both sides and both the parties entered appearance. The workers were represented by the Union and the union filed the claim statement. The management has also filed a written statement. While the matter was pending both the parties submitted that the dispute has been settled amicably out of court. On 11-2-1993 the counsel for the union filed a statement to that effect along with a photostat copy of the memorandum of settlement entered into between the management and the union dated 29-1-1993. As per the annexure to the said settlement the present dispute namely I. D. 3/91 (C) has been settled. The clause 4 of the terms of the said Settlement would make it clear that the dispute in this case has been settled amicably between the parties. So, this Court is pleased to record the said settlement filed by the counsel for the Union. This circumstance would clearly establish the fact that the matter in dispute has been settled out of Court. So, this court has no hesitation to hold that there is no subsisting industrial dispute between the parties to this order of reference.

3. In the result, an Award is passed holding that there is no subsisting industrial dispute between the parties to this order of reference.

M. V. VISWANATHAN, Presiding Officer

Ernakulam,

नई दिल्ली, 17 मार्च, 1993

का.प्र. 727:-औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार धनलक्ष्मी बैंक लिमिटेड के प्रबंधन के संबंध में निम्नलिखित और उनके कर्मचारियों के बीच मतभेदों में निहित औद्योगिक विवाद में श्रम न्यायालय ऐरनाकुलम के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 16-3-93 को प्राप्त हुआ था।

[संख्या एन-12011/35/88 डी I (बी)/आई धार (बी I)]

एस. के. जैन, ईस्क अधिकारी

New Delhi, the 17th March, 1993

S.O. 727.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court, Ernakulam, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dhanalakshmi Bank Ltd., and their workmen, which was received by the Central Government on 16-3-93.

[No. L-12011/35/88-DI(B)/IR(BI)]

S. K. JAIN, Desk Officer.

## ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT,  
ERNAKULAM

(Labour Court, Ernakulam)

(Tuesday, the 23rd day of February, 1993)

PRESENT :

Shri. M. V. Viswanathan, B.Sc., LL.B., Presiding Officer.  
Industrial Dispute No. 15 of 1989 (C)

BETWEEN :

The Chairman, Dhanalakshmi Bank Ltd.,  
Trichur-680001, Kerala.

AND

Shri. M. Radhakrishnan, 30/1360-A, Suji, Poonithura  
P.O., District Ernakulam, Kerala.

REPRESENTATIVES :

M/s. P. F. Thomas & Sunil Thomas, Advocates,  
Cochin-682 012. — For Management.M/s. M. Ramachandran & P. V. Abraham, Advocates,  
Cochin-682 017. — For Workman.

## AWARD

This industrial dispute was referred to this Court by the Government of India by its Order No. L-12011/35/88-DI(B)/IR(B)I dated 20-7-1989. The dispute is between the management of M/s. Dhanalakshmi Bank Ltd., Trichur and their workman Sri. M. Radhakrishnan. The issue referred for consideration is "Whether the action of the management of M/s. Dhanalakshmi Bank Ltd., Trichur in dismissing Sri. M. Radhakrishnan, Sub-Staff from service with effect from 6-10-1987 is justified. If not, what is the extent of relief Sri. Radhakrishnan is entitled to?"

II. The management had conducted a domestic enquiry into the charges against the workman Sri. M. Radhakrishnan. The Enquiry Officer found the workman guilty of the charges levelled against him. The management accepted the said findings and imposed the punishment of dismissal from service. The validity of the domestic enquiry and the findings thereon was challenged by the workman. On the other hand, the management supported the domestic enquiry. They further contended that the punishment of dismissal is only just and proper. The validity of the domestic enquiry and findings thereon was upheld by me by virtue of the order dated 13-1-1993. I shall here extract the said order in full :—

## "PRELIMINARY ORDER

The workman herein was a member of the subordinate staff of the management bank. While he was working at the Hospital Road Branch, Ernakulam, he was suspended from service pending enquiry. A memo of charges was issued against the workman alleging misconduct. The workman submitted his explanation to the said memo of charges. But the management was not satisfied with the said explanation and so the management ordered domestic enquiry to enquire into the charges levelled against the workman. A. S. Ramakrishnan, Manager, Chairman's Secretariat, Dhanalakshmi Bank Ltd., Central Office, Trichur was appointed as the Enquiry Officer. He conducted the domestic



enquiry and found the workman guilty of the charges levelled against him. On the basis of the said findings in the enquiry, the workman was dismissed from service with effect from 6-10-1987. The workman preferred an appeal to the Chairman of the Management Bank and that appeal was dismissed. The workman raised an industrial dispute regarding his dismissal from service and it resulted in the present dispute.

3. The workman filed a claim statement stating as follows :—

The workman was a member of the subordinate staff of the management bank at their branch at Ernakulam. He was confirmed in service in the year 1982. On 5-9-1985 he was suspended from services pending enquiry. On 23-10-1986 a memo of charges was issued to him. By the time the Regional Manager of the management bank had lodged a criminal complaint to the Superintendent of Police, Vishakhapatnam implicating the workman along with some others. The Police filed a charge report before the 3rd Additional District Magistrate and the same is pending trial. He was released on bail. It was in the said circumstances the charge sheet was issued against him. The allegations raised against him were far fetched. The bank had threatened and coerced him to obtain letter to implicate him in the charges. The accusation was ill conceived and motivated. Certain Officers might have committed some irregularities, but he had no part to play in any of the scheme. He obeyed the instructions given to him from time to time. He had no intention to defraud the bank or cause wrongful loss to the Bank. The draft leaf had been taken possession of by the Branch Manager. He was not aware of it. The counter foil of the draft had been cancelled by the Branch Manager and such an entry had been made by the Manager in the issue register. The workman was not in a position to explain how the forgery tempering occurred. The manner had something for which the workman is not responsible. The procedure adopted by the Enquiry Officer was in violation of principles of natural justice. The presenting officer was a legally qualified person. The workman was denied proper assistance by a legally qualified person. The witnesses examined on the side of the managements were tutored, his request for making available relevant documents were not considered by the Enquiry Officer. The depositions were not correctly recorded. The findings of the Enquiry Officer are perverse. The order passed by the Appellate Authority is cryptic and it is only a single line order. The Appellate Authority has not discharged its duties as envisaged in the relevant settlements. The grounds stated in the memorandum of appeal were not considered by the Appellate Authority. The management was biased against the workman. They predecided to dismiss the workman from service. The disciplinary action initiated by the management is illegal and unsustainable in view of the Bipartite Settlement dated 19-10-1986. By virtue of paragraph 19.3 of the said settlement the bank had no right of jurisdiction to take disciplinary action in respect of an offence. The allegations raised against the workman was offence and the management had lodged a complaint with the Police at Vizakapatnam. A crime has been registered by the Police and the same is pending trial. So the action of the management in dismissing the workman on the basis of the disciplinary proceedings initiated is not correct. The charges levelled against the workman did not fall under any of the misconducts categorised in the Bipartite Settlement. The workman was having a blemishless record of service. He had on his shoulders family responsibilities. It is difficult for him to get other employment. Hence he requested for his reinstatement with all benefits.

3. The management filed a counter statement contending mainly as follows.—The workman was working in the Hospital Road Branch of the Bank during August, 1985. While so, he in collusion with the Manager and the Assistant Manager of the Branch, brought into existence a draft for Rs. one crore in favour of the Commissioner of Excise Hyderabad drawn on the Hyderabad Branch of the Bank. The said draft was dated 17-8-1985 and carried the No.-698188/288. Showing the above draft as cancelled in the Bank records, it was fabricated into a draft for the exorbitant amount which was later found to have been utilized in

an Abkari auction in Vizhakapatnam. The management got information about the said draft related to the Hospital Road Branch. The fraud relating to this draft attracted media attention of the national press and investigation stated by the Crime Branch of Hyderabad which affected the reputation and the credibility of the management Bank. The above two managers and the sub-staff were taken under custody by the Police and later released on bail and a case is registered and the same is still pending. On a preliminary enquiry conducted by the Bank through its officers, it was found that all the three were involved in the fraud. On the basis of the misconducts disclosed separate charge sheets were issued to all the three persons involved in that misconducts. Three domestic enquiry were conducted and they were found guilty and dismissed from the service of the Bank. A memo of charges dated 23-10-1986 was issued to the workman herein stating as follows :—

1. You, in collusion with Sri. V. Nandanam, the then Branch Manager and Sri. P. Uanikrishnan, the then Asst. Manager of the branch, stealthily removed one agency draft leaf bearing No. 698188 and caused it to be forged for a sum of Rs. 1.00 crore without receiving considered favouring the Commissioner of Excise Hyderabad (A.P.) payable at our Hyderabad Branch for presenting it at Abkari auction at Vishakapatnam on 22-8-1985 knowing the same to be forged.
2. You did the above acts dishonestly with ulterior motive to cheat and defraud the Bank and for making wrongful gain.
3. Your above said acts are highly detrimental to the interest of the Bank and subversive of discipline and also affected the image of the bank.

The explanation offered by the employee was not satisfactory. So the said case of perversity set up by the workman is charges. In an earlier written statement given by the workman he had admitted his involvements in the said fraud. The working was on leave from 19-8-1985 to 24-8-1985. During the said period of leave, the workman went to Vishakhapatnam from Ernakulam by plane and stayed there in hotels along with an Abkari Contractor and returned. The management appointed the Chief Manager, Central Office, Trichur as the Enquiry Officer and another officer of the bank was appointed as the Presenting Officer. The worker was granted permission to engage an office bearer of the recognised trade union as he was a member of the union to assist him in the enquiry. But he did not avail the opportunity. He was given the list of witnesses of the management and permitted to peruse all the documents which were proposed to be produced in the enquiry, prior to the enquiry. The employee was given all and every opportunity to cross examine all the witnesses who were examined in the enquiry. The workman elaborately cross examined all the witnesses. The Enquiry Officer was absolutely impartial and every question put to the witnesses was recorded and no question was declined. The employee did not examine anybody on his side. But he gave evidence as a witness in the enquiry. The Enquiry Officer entered into the findings on the basis of the evidence, facts and circumstance of the case. The workman was found guilty of the charges levelled against him. The workman was dismissed from services on the basis of the said findings of the Enquiry Officer. The domestic enquiry was proper and in consonance with all the principles of natural justice, and same is not vitiated by any irregularity or impropriety. The appeal filed by the employee was considered and dismissed. The management issued charge sheet against the workman not on the basis of the Police case. The disciplinary action taken against the workman was independent of the Criminal action. There is no illegality in initiating the disciplinary action against the workman for misconduct. The allegations raised against the workman would constitute misconduct. The disciplinary action was taken not for an offence but for misconducts in connection with the functioning of the Bank. The alleged misconducts were proved in the enquiry. The proved misconduct were serious. The punishment of dismissal is only correct.

4. The workman is challenged the very validity of the domestic enquiry and the findings thereon. So, this court was pleased to consider the validity and propriety of the domestic enquiry and the findings thereon as a preliminary point.

5. The Enquiry Officer was examined as MW1 and the workman as WW1. The book containing the enquiry proceedings with the deposition of witnesses was marked as Ext. M1. The file containing the enquiry report with the findings and connected papers was marked as Ext. M2. Exts. W1 to W11 documents were marked on the side of the workman.

6. The Point.—The workman was working as a sub-staff of the management bank at the Hospital Road Branch, Ernakulam. While he was working as a peon of the said branch, he was suspended pending enquiry by the letter dated 5-9-1985. Subsequently, on 23-10-1986 a memo of charges was framed against the workman and the same was issued to the workman. The workman submitted his explanation to the said memo of charges. The management was not satisfied with the said explanation and so the domestic enquiry was ordered to enquire into the charges levelled against the workman. A manager at the Central Office of the bank was appointed as the Enquiry Officer. There was also a presenting officer to prosecute the charge against the workman in the enquiry.

7. The workman has disputed the sustainability of the charges levelled him. According to the workman the alleged charges would not constitute a misconduct and so the disciplinary action taken against him for misconduct is unsustainable. But a perusal of the memo of charges dated 23-10-1986 would clearly show that the said charge was framed against the workman for the acts of grave and serious misconducts. The alleged misconduct is regarding his collusion with the then branch Manager and Asst. Manager in making a forged draft for a sum of Rs. one crore without receiving consideration, favouring the Commissioner of Excise, Hyderabad payable at the bank's Hyderabad Branch for presenting the same at the Abkari auction at Vishakapatnam on 20-2-1985. It is further alleged that the said dishonest action was done with ulterior motive to cheat and defraud the bank and for making wrongful gain. It is also alleged that the said acts are highly detrimental to the interest of the Bank and subversive of discipline and also affected the image of the Bank. So the charges levelled against the workman would constitute misconduct. The mere fact that the said acts committed by the workman would also constitute a criminal offence will not in any way affect the right and authority of the management Bank to take disciplinary proceedings against its employee in connection with the functioning of the said Bank. So the case of the workman that the charges levelled against him would not constitute misconduct and the disciplinary action taken against him is against the provisions of the Bipartite settlement cannot be upheld.

8. Ext. M1 enquiry proceedings would show that there was a presenting officer to prosecute the charges levelled against the workman. It is true that the workman requested for engagement of an Advocate or an outsider of his choice to defend his case in the enquiry. But the said request made by the workman was disallowed by the Enquiry Officer. It is pertinent to note at this juncture that there is no provision in the Bipartite settlement to permit an employee of the bank in engaging an Advocate or an outsider in a domestic enquiry. It is to be noted that the presenting officer was not a legally qualified person. The Enquiry Officer as MW1 has categorically deposed that the presenting officer was not a legally qualified person, but he was only an officer of the management bank. He further deposed that the workman was permitted to engage a union member or an office bearer of the union in defending his case in the enquiry. It is an admitted fact that the workman herein was a member of the union. So, he could have very well availed the assistance of a member of his union to defend him in the enquiry. But the workman was not interested in engaging a member of his union in defending his case. On the other hand, the workman himself conducted the cross-examination of the witnesses. He himself gave evidence in the enquiry

as a witness. Ext. M1 and M2 documents would also reveal the fact that the workman was given the permission to engage a union member to defend him in the enquiry. These documents would reveal the fact that the workman effectively and elaborately cross-examined the witnesses examined on the side of the management. So, there is no ground to hold that prejudice has been caused in disallowing the request for engaging an Advocate or an outsider in the enquiry.

9. The case of the workman that he was not permitted to adduce defence evidence cannot be accepted. It is true that the workman requested the Enquiry officer for the examination of the then Manager and the Asst. Manager as witnesses on the side of the management and thereby to give him an opportunity to cross-examine those witnesses. But the said request of the workman cannot be taken as a reasonable one. It is the basic principle that the opposite party cannot be directed to cite a particular person as witness for the convenience of the other side. The management has the discretion to choose the witnesses to be examined on their side to substantiate the charges levelled against the workman. The workman has no right or authority to dictate the management or the Enquiry Officer in the matter choosing the witnesses to be examined on the management's side. If the workman was so particular in examining the then Manager and Asst. Manager as witnesses in the enquiry, he could have very well cite those persons as witnesses on his side. But the workman did not choose to do so. It is further to be noted that the workman has not produced the list of witnesses or list of documents before the commencement or during the enquiry. His submission that he will cite the witnesses only after the cross-examination of the management witnesses cannot be treated as just and proper. He could have very well filed the list of witnesses and documents and asked for their examination after the examination of the management witnesses. But the workman did not opt the course. On the other hand, he never filed the list of witnesses or list of documents in the enquiry. It is further to be noted that the workman himself gave statement before the Enquiry Officer. Thus the workman cited himself as a witness in the enquiry. It was after the examination of the management witnesses. But the workman did not bring any other witnesses to be examined on his side. He did not ask for time for examination of his witnesses. If the workman brought any witnesses for examination and the examination of that witness was disallowed by the Enquiry Officer, then it can be taken that the said action of Enquiry Officer caused prejudice to the workman. But, in his case nothing that sort of had occurred. Another aspect to be considered at this juncture is the issuance of list of witnesses and list of documents to the workman. The workman accepted the list of witnesses and list of documents even prior to the commencement of the domestic enquiry. It is further to be noted that the workman was given sufficient opportunity to pursue those documents which were sought to be produced in the enquiry. The workman pursued those documents, even before the commencement of the enquiry. Thus, the workman was given sufficient opportunity to pursue the documents relied on in the enquiry. He was fully aware of the witnesses to be examined in support of the charges. The workman has no case that his request for adjournment of the enquiry was not allowed by the Enquiry Officer. On the other hand, the enquiry proceedings would show that sufficient opportunities were given to the workman for cross-examining the management witnesses. There is nothing on record to show that any question put to the management witnesses was disallowed by the Enquiry Officer. There is also nothing on record to hold that the Enquiry Officer did not record the deposition of the witnesses properly. On the other hand, the available evidence and circumstance would only show that the Enquiry Officer recorded the enquiry proceedings in a just and proper manner. The enquiry officer as MW1 has deposed about the manner in which the domestic enquiry was conducted. The case of the workman that some questions were not allowed by the Enquiry officer and that the Enquiry Officer did not record the evidence of the witnesses properly cannot be accepted. There is no ground to disbelieve the testimony of MW1, the Enquiry Officer. He had no enmity or ill-feeling towards the workman. The

mere fact that the Enquiry Officer happened to be an officer of the management cannot be taken as a ground to hold that he was partial or biased. It is further to be noted that MW1 when examined before this Court was not in the service of the management bank. A perusal of the oral testimony of MW1 would show that he has only deposed about the facts which actually occurred in connection with and during the domestic enquiry. I have no hesitation to believe the testimony of MW1, the Enquiry Officer. Thus a perusal of the entire evidence, facts and circumstance of the case would reveal the fact that the enquiry was conducted in accordance with the principles of natural justice. The workman was given every opportunity to defend his case in the enquiry. He actually and effectively participated in the domestic enquiry. No prejudice has been caused to the workman in conducting the domestic enquiry. The domestic enquiry was conducted in an impartial and just manner.

10. The workman has also challenged the sustainability of the findings made by the Enquiry Officer in the enquiry. According to the workman the findings in the enquiry are perverse and not supported by the evidence on record. It is true that the enquiry report and the findings thereon are very brief. But a carefully study of the enquiry report and the findings thereon would show that the enquiry officer has considered the entire evidence on record and it is only on the basis of the available evidence on record he entered into the findings recorded in the enquiry. The Enquiry Officer appreciated both documentary and oral evidence on record. He has also given the reasonings for the findings in the report. It is to be noted that the Enquiry Officer was not a legally qualified person. So, he may not be in a position to give the reasonings in an arranged manner. His report may not be in the style of a judgment of a court of law. But the report and findings would give a clear indication that the Enquiry officer has appreciated the evidence on record. He has acted only on the basis of the available evidence on record. The mere fact that the Enquiry Officer reproduced the oral testimony of the witnesses in the enquiry report will not make the report unacceptable. That would only show the lack of experience in writing enquiry report. But that will not in any way affect the acceptability of the report and the findings thereon.

11. The evidence on record would clearly establish the fact that the workman directly involved in the fraud related to the concoction of a draft for a sum of Rs. One crore. His absence from office during the relevant period and his journey along with the Abkari Contractor and the then Asst. Manager of the Bank and his stay at different hotels in various places in the state of Andhra Pradesh would give a clear indication about his direct involvement in the said fraud. The version of the workman that he simply followed the Abkari Contractor and the then Asst. Manager without knowing anything and he was simply staying at hotels without getting any information cannot be believed. If the workman was not in any way involved in the said act of fraud, there was no necessity for the then Asst. Manager or the Manager or the Abkari Contractor to take the workman along with them to different places in Andhra Pradesh. There was no necessity for them to have a air trip along with this workman from Ernakulam to Vijayawada or Hyderabad. The other involvement of the workman regarding the draft taken by one Krishnakumar and the subsequent cancellation of that draft amount for Rs. 5,000 and the crediting of that amount into the account of the workman would also give an indication about the direct involvement of the workman in the said fraud. It is further to be noted that the said Krishnakumar was introduced to the Bank by the workman. Thus an appreciation of the entire circumstance and the available evidence would prove the direct involvement of the workman in the fraud. It is further to be noted that the degree of proof and the nature of evidence required in a domestic enquiry are not at that of the degree of proof and nature of the evidence required in a criminal proceedings or civil proceedings. Thus, I have no hesitation to hold that findings in the enquiry are based on the evidence on record. There is nothing on record to hold that the said findings are perverse.

So the said case of perversity set up by the workman is negated.

12. In the result, I hold that there was a proper and valid domestic enquiry. It is further held that the findings in the domestic enquiry are legal and sustainable.

III. The remaining question for consideration is as to whether the workman is entitled to any reliefs in the matter of punishment. The management would contend that there action was bonafide and the misconducts proved were serious. So, they prayed for upholding the dismissal of the workman from service. The misconducts alleged against the workman were prove in a properly conducted domestic enquiry. The proved misconducts are very serious in nature. The gravity of the misconduct committed by the workman would make the punishment of dismissal proportionate, just and proper. I do not find any ground to interfere with the order of punishment passed by the management Bank. The workman is guilty of fraud. The facts and circumstance of the case would clearly show that the said misconduct of the workman had even affected the interest and image of the management Bank. Thus the management is justified in their action of dismissing the workman from the service. Hence, the punishment imposed upon the workman is upheld.

IV. In the result, an award is passed finding that the dismissal of the workman is valid, proper and justified. The workman herein is not entitled to any relief in this case.

Ernakulam,

23-2-1993.

M. V. VISWANATHAN, Presiding Officer.

#### APPENDIX

Witness examined on the side of Management :

MW1. Sri. A. S. Ramakrishnan,

Witness examined on the side of Workman :

WW1. Sri. M. Radhakrishnan.

Exhibits marked on the side of Management :

Ext. M1.—Original Enquiry Proceedings.

Ext. M2.—File containing all the exhibits and proceedings of domestic enquiry.

Exhibits marked on the side of workman :

Ext. W1.—Acknowledgement card signed by the Enquiry Officer on 25-5-1987.

Ext. W2.—Acknowledgement card signed by the Enquiry Officer on 11-6-1987.

Ext. W3.—Carbon copy of letter dated 13-5-1987 from the Petitioner to the Enquiry Officer.

Ext. W4.—Carbon copy of letter dated 13-5-1987 from the Petitioner to the Enquiry Officer.

Ext. W5.—Photocopy of letter dated 19-5-1987 from the Petitioner to the Enquiry Officer.

Ext. W6.—Photo copy of letter dated 19-5-1987 from the Petitioner to the Enquiry Officer.

Ext. W7.—Carbon copy of letter dated nil from the Petitioner to the Enquiry Officer.

Ext. W8.—Carbon copy of letter dated 23-5-1987 from the Petitioner to the Enquiry Officer.

Ext. W9.—Carbon copy of letter dated 23-5-1987 from the Petitioner to the Enquiry Officer.

Ext. W10.—Acknowledgement card signed by T. S. Ramakrishnan on 29-5-1987.

Ext. W11.—Carbon copy of Memorandum of Appeal submitted by the petitioner before the Management.

वर्ग द्वितीय, 18 मार्च, 1993

का.प्र. 728—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध निरोजका और उनके कर्मकारों के बीच भ्रष्टाचार में विवाद औद्योगिक विवाद में भ्रष्टाचार ऐलकुलम के पंचाट का प्रकाशित करती है जो केन्द्रीय सरकार को 17-3-93 का प्राप्त हुआ था।

[संख्या एल-12012/268/88 जी III(ए)]

एस. के. जैन, डेस्क अधिकारी

New Delhi, the 18th March, 1993

S.O. 728.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 17-3-1993.

[No. L-12012/268/88-D.III(A)]

S. K. JAIN, Desk Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM

(Labour Court, Ernakulam)

(Wednesday, the 10th day of February, 1993)

#### PRESENT:

Shri M. V. Viswanathan, B.Sc., LL.B., Presiding Officer.  
Industrial Dispute No. 8 of 1989 (C)

#### BETWEEN

The Regional Manager, Region I, State Bank of India.  
Regional Office, Ernakulam, Cochin-31, Kerala-  
682031.

#### AND

The workmen represented by the General Secretary, Bank  
of Cochin Employees Association, Maas Hotel,  
Ernakulam, Cochin-18.

#### REPRESENTATIONS:

M/s. B. S. Krishnan & Associates,  
Advocates, Ernakulam. ... For Management  
Sri A. V. Xavier, Advocates,  
Elamkulam, Cochin-20. ... For Union.

#### AWARD

This reference was made by the Government of India by its Order No. L-12012(268)/88-D.III(A) dated 23-3-1989. The dispute is between the management of State Bank of India (Bank of Cochin) Calicut and their workmen represented by the General Secretary, Bank of Cochin Employees Association, Cochin-18. The issue referred for consideration is "Whether the action of the Regional Manager, (Region-I), State Bank of India, Ernakulam, in dismissing Sri M. J. John, Clerk, with effect from 29-5-1986 for certain alleged misconduct brought out in charge sheet dated 7-2-1988 is justified? If not, to what relief Sri M. J. John is entitled to? The date of the charge sheet mentioned in the order of reference can only be 7-2-1985. Because the workman Sri M. J. John was dismissed from service with effect from 29-5-1986. It is the admitted case that the workman was charge sheeted by the charge sheet dated 7-2-1985.

II. Sri M. J. John was an employee of the erstwhile Bank of Cochin. He was working as the Manager of the Mulavukad Branch of the bank. He was charge sheeted on 7-2-1985 alleging misconduct. The allegation against the workman is that he colluded with one Sri C. V. Vinayakan to defraud the Management Bank to the tune of Rs. 32,399 in purchasing a cheque. The workman Sri M. J. John submitted his explanation to the memorandum of charges. But the management

was not satisfied with the said explanations. So, a domestic enquiry was ordered to enquire into the charges levelled against the workman. The enquiry Officer found the workman guilty of the charges. The management accepted the findings of the Enquiry Officer and on the basis of the same the workman was dismissed from service with effect from 29-5-1986. The workman raised an industrial dispute regarding his dismissal from service and it resulted in the present reference.

III. The validity of the domestic enquiry and the findings thereon was considered by this Court as a preliminary issue. By the order of this Court dated 4th November, 1991. The findings in the domestic enquiry were set aside. That order is appended to this award as an Annexure.

IV. The Enquiry Officer was examined as MW1 and the enquiry file was marked as Ext. M1 in connection with the above said preliminary order. After the Preliminary order the management adduced fresh evidence to substantiate the charges levelled against the workman. MWs 2 and 3 and WW1 were examined and Exts. M1(a) to M1(k) were marked.

V. The point that arise for consideration is as to whether Sri M. J. John is guilty of the alleged misconduct of fraud, gross misconduct, violation of head office instructions and causing financial loss and wilful damage to the interest and affairs of the Bank.

VI. The charges levelled against the workman are stated in the memorandum of charges dated 7-2-1985. The said memorandum of charges is marked as Ext. M1(h). It reads as follows:—

#### Memorandum of Charges

It is reported that you, while working as Manager of our Mulavukad Branch, have committed the following gross misconducts. A Cheque No. ENK 0146735 for Rs. 32,399 dated 29th December, 1982 drawn on Bank of India, Shanmukham Road, Ernakulam was issued by the New India Assurance Co. Ltd. for the full and final settlement of an insurance claim name by M/s. Rani Poultry Farm owned by Mr. C. V. Vinayakan, a unit financed by out Ernakulam South Branch and the amount in question is due to the loan account of the said party. The Insurance Company has taken all necessary precautionary measures to protect the interest of the Bank by issuing an account payee cheque favouring "Bank of Cochin Ltd., Account C. V. Vinayakan" superscribing on the face of the cheque as "Claim disbursement account". It is reported that you, on 30th December, 1981 unauthorisedly and without proper authority purchased the above cheque (CRP 1266) from Mr. C. V. Vinayakan with ulterior motive and credited the proceeds to S.B. Account No. 2264, a new account in the name of Mr. C. V. Vinayakan opened on the very same day just for encashing this cheque overlooking the indications on the face of the cheque. The entire amount was drawn by Mr. C. V. Vinayakan by four withdrawals as follows:

- (1) 3-1-1983—Rs. 18,000
- (2) 5-1-1983—Rs. 10,000,
- (3) 11-1-1983—Rs. 4,000
- (4) 19-1-1983—Rs. 375

Thus, you have colluded with Sri C. V. Vinayakan to defraud the Bank to the tune of Rs. 32,399.

The above acts as alleged to have been committed by you would amount to fraud, gross misconduct, violation of Head office instructions with vested interest, causing financial loss and wilful damage to the interest and affairs of the Bank.

The workman Sri M. J. John submitted his explanations to the said charges by his letter dated 12th February, 1985. Ext. M1(i) is the explanation submitted by Sri M. J. John. By the said explanation he denied the charges levelled against him. He pleaded innocence of the said charges. The workman and the Union have got a case that the workman was punished for the same charges on a previous occasion and a punishment of demotion to the post of Clerk was imposed on him and the workman accepted the said punishment. So according to the union the charges containing in the charge sheet dated 7th February, 1985 are unsustainable. It is true that while

the workman was working as the Manager of the Mulavukad Branch of the Bank of Cochin, he was charge sheeted by the memo of charges dated 13th September, 1983. An enquiry was conducted to enquire to the said charges and he was found guilty of the charges. The management imposed the punishment of demotion from the post of Manager to the post of Clerk. Ext. M1(k) is the copy of the domestic enquiry report with the finding dated 25th November, 1983. Ext. M1(j) is the order of punishment issued by the management Bank to the workman wherein thereby he was demoted as a Clerk with effect from 5th January, 1984. Ext. M1(k) enquiry report would show that the charges against the workman in the said enquiry were of granting of unauthorised advance without Head Office sanction i.e. overdrawals allowed in current account, overdrawals in Savings Bank accounts, Granting of demand loan accounts without Head Office sanction/ratification, purchasing of documentary bills without Head Office sanction/ ratification, purchasing of clean bills during the period from 2nd January, 1982 to 16th April, 1983 thereby purchased 825 cheques amounting to Rs. 26,25,168.99 for which no sanction/ratification was obtained from the Head Office and open cash credits accounts facilities given to three persons and granting of advances in excess of the individual limit without the sanction/ratification of the Head Office. Thus, it can be seen that there was no allegation of fraud or causing financial loss or wilful damage to the interest and affairs of the Bank. So, the case of the workman that the charges levelled against him in the charge sheet dated 7th February, 1985 are unsustainable cannot be upheld. But, it is pertinent to note that the allegation in the chargesheet dated 7th February, 1985 regarding violation of Head Office instructions with vested interest will not sustain by virtue of the enquiry conducted in respect of the Memorandum of charges dated 13th September, 1983. It is further to be noted that the cheques involved in the present dispute is dated 29th December, 1982 and it was purchased by the Mulavukad Branch of the Bank of Cochin on 30th December, 1982. In the earlier charges also the cheques purchased during the period from 2nd January, 1982 to 16th April, 1983 were the subject matter of that disciplinary proceedings. It related to the purchase 825 cheques amounting to Rs. 26,25,168.99. One of the charges therein was that the said cheques were purchased by the workman as Manager of that branch without the sanction/ratification of the Head Office. For the said charge an enquiry was conducted and he was found guilty. A punishment of demotion to the post of Clerk was imposed on him and it was accepted by him. It is to be noted that the present charge sheet dated 7th February, 1985 was served on the workman while he was working as a Clerk at the Head Office of the Management Bank. So, the charge of violation of the instructions of the Head Office will not sustain. It is a well settled principle that a person cannot be punished twice for the same offence. Moreover, the management has not adduced any evidence that the purchase of the cheque involved in this case was without sanction. It is come out in evidence that every week a statement will be sent to the Head office from the Branches showing the cheques and bills, purchased. It is also come out in evidence that if the purchase of the cheques or bills was not sanctioned or ratified that will be communicated to the concerned branch. But in the present case there is no evidence on record to show that the management refused to ratify the action of the manager in purchasing the said cheque No. ENK 0146735 for Rs. 32,399 dated 29th December, 1982. Thus, in all respects the charge regarding violation of the instructions of the Head Office will not sustain. So I have no hesitation to find the workman not guilty of the said charge of violation of Head Office instructions with vested interest.

VII. The allegations in the charge that a Cheque No. ENK 0146735 for Rs. 32,399 dated 29-12-1982 drawn on Bank of India, Shanmugham Road, Ernakulam was issued by New India Assurance Company Limited for the settlement of an insurance claim is an admitted fact. But the further allegation that the said cheque was issued for the settlement of an insurance claim made by M/s. Rani Poultry Farm, owned by Mr. C. V. Vinayakan is not admitted by the workman. Ext. M1(b) is the photo stat copy of the said cheque dated 29-12-1982. There is nothing in the said cheque dated 29-12-1982. There is nothing in the said cheque to indicate the name of M/s. Rani Poultry Farm owned by Mr. C. V. Vinayakan. It is to be noted that the management has not cared to get the original of this cheque. But, it is admitted by MW2 that there is nothing in the

cheque to show that the cheque was issued by the New India Assurance Company Ltd. for the full and final settlement of an insurance claim made by M/s. Rani Poultry Farm owned by Mr. C. V. Vinayakan. On the other hand, the said cheque would only show that the said cheque was issued to M/s. Bank of Cochin, A/c. C. V. Vinayakan for a sum of Rs. 32,399 with an endorsement "claim disbursement account". So, on production of this cheque by the account holder, the then Manager of the Mulavukad Branch was not in a position to understand that the said cheque was issued for the full and final settlement of an insurance claim made by M/s. Rani Poultry Farm, owned by Mr. C. V. Vinayakan. It is further to be noted that Mr. C. V. Vinayakan opened an S.B. account with the Mulavukad Branch of the erstwhile Bank of Cochin. The workman herein was the then Manager of that Branch. It is true that the said Account was opened on 30-12-1982. But, it is pertinent to note at this juncture that Mr. C. V. Vinayakan was introduced by one Mr. C. P. Antony, Chullickal House, Cochin-5, who also was having a S.B. Account in the said Branch vide Account No. 1718. The said C. P. Antony opened the said account in 1981. He was introduced by one Mr. M. S. Muralledharan, Thoppumpady, Cochin-5. These facts can be seen from Ext. M1(a) report submitted by the Manager, O&M Department of the Management Bank. The Manager who submitted Ext. M1(a) report was examined before this Court as MW2. So, there was nothing wrong on the part of the workman in permitting Mr. C. V. Vinayakan to open a S.B. Account with that branch. The case of the management that Mr. C. V. Vinayakan was a resident of Kadavanthara, Cochin-20 and that place is far away from Mulavukad, that there are other two branches of the Management Bank in between Mulavukad and Kadavanthara is having no substance. The workman as WW1 has categorically deposed that Mulavukad is an island and it was difficult for him as a Manager to deposit from the Island and so he had to canvass for deposits from persons residing in the main land. This version of WW1 is supported by Ext. M1(a) report. It can be seen that C. P. Antony an account holder on the Mulavukad Branch is a resident of Cochin-5 and the other persons M. S. Muralledharan is a resident of Thoppumpady, Cochin-5. This would give an indication that the account holders of Mulavukad branch of the management Bank are residents of the main land. Thus, there is no suspicious circumstance in opening an S. B. account by C. V. Vinayakan at the Mulavukad Branch of the management bank. It is pertinent to note at this juncture the version given by the workman as WW1 that he was eager and anxious in getting deposits by the end of the year. He further deposed that the cheque was presented on 30-12-1982 and there was no time to send the cheque for collection and that is why he purchased the said cheque only for the purpose of getting deposit at the end of the year MW3 has admitted the fact that the management Bank would make a drive in the branches to get deposits. He further deposed that canvassing for deposits is the duty of the manager of the branch. So, there was nothing extra ordinary in the eagerness or anxiety of the workman to get mere deposits and for that purpose he canvassed the customers. WW1 has also deposed about the canvass made by him on C. P. Antony. He further deposed that Mr. C. V. Vinayakan was introduced by Shri C. P. Antony for the purpose of getting deposits. So the purchasing of the said cheque by the Manager can only be treated an act done by him as part of his duty. It is true that he purchased the said cheque exceeding his limits. But, for that act the workman was punished by the management and thereby he was demoted to the post of a Clerk.

VIII. There is nothing on record to show that the said cheque for Rs. 32,399 drawn on Bank of India by the New India Assurance Company was the property of the management Bank. The Ext. M1(b) cheque would not show that the Bank of Cochin is the beneficiary. The workman as WW1 has deposed that he purchased the cheque believing the version given by Mr. C. V. Vinayakan that the said cheque is issued in his favour towards the insurance claim in respect of his vehicle. The mere fact that the cheque is issued to the payee by name M/s. Bank of Cochin, Account Mr. C. V. Vinayakan

cannot be taken as a ground to hold that the cheque was issued in favour of Bank of Cochin towards a loan account. The workman is justified in his action on several grounds. There was nothing on the face of the said cheque to infer that it was issued in full and final settlement of an insurance claim made by M/s. Rani Poultry Farm owned by Mr. C. V. Vinayakan. There was also nothing on the cheque to indicate that the Ernakulam South Branch of the Bank of Cochin has any claim over the said amount. The name of the Ernakulam South Branch or the name of any other branch of the Bank of Cochin was not shown in the said cheque. There was also no indication to show that any loan on amount is due to the Bank from the said Mr. C. V. Vinayakan. If there was a bank clause, then necessarily the cheque should have been issued to the concerned branch of the bank. But, in the case the Insurance Company handed over the cheque directly to the party. So the production of the cheque by Mr. C. V. Vinayakan would show that the property is of that person. So there was nothing available for the branch Manager to doubt the ownership of Mr. C. V. Vinayakan over that cheque. The workman as the Manager of the branch had occasion to deal with such cheques drawn by the insurance company. He pointed out one instance of Mrs. Mary Varghese. Ext. M1(i) is the covering letter sent by the United India Insurance Company to the Mulavukad branch of the Bank of Cochin on 19-2-1982. The cheque mentioned in Ext. M1(i) was sent with the said covering letter by registered post to the bank directly. So the workman was of the belief that if there was any claim on the said cheque for the bank, then necessarily that cheque would have been sent directly to the concerned branch of the bank by registered post with a covering letter or by local delivery. His stand is further fortified by his testimony regarding the practice of issuing advance receipt by the concerned branch for getting cheque. WW1 has deposed that in the transaction in respect of Mrs. Mary Varghese, he had issued the advance receipt to the insurance company and the Insurance Company sent the cheque directly to the Bank. So, it was the duty of the Manager of the Ernakulam South Branch to see that the cheque is received by the said branch. The Ext. M1(a) report submitted by MW2 would reveal the fact that the Manager of the Ernakulam south branch had issued an advance receipt for the said cheque, but the said branch did not take any steps to get the cheque from the Insurance Company.

IX. Another important circumstance that will support the case of the workman is forwarding of the cheque to the main branch of the management bank for collection. If the case of the management that the superscribing on the face of the cheque as claim disbursement account with the name of the payee as M/s. Bank of Cochin, Account Mr. C. V. Vinayakan would clearly show that the Bank has a claim over that amount is true and correct. Then the main branch who got the said cheque for clearance from the Mulavukad branch should have sent back the same to the branch or should have brought the fact to the notice of the Head Office regarding the unauthorised purchase of the cheque by the Branch. But, on the other hand, the main branch without any objection received the said cheque for collection. If really, the amount covered by that cheque is due to the bank, then there was no necessity for purchasing the said cheque by the bank. If that be the case, the main branch should have questioned the action of the branch Manager in purchasing the cheque which was the property of the bank itself. So, this circumstance would show that the superscribing on the face of the cheque would not give an indication that the amount covered by the cheque is due to the management bank. If that was the position, the main branch should not have accepted the same for collection. It is further to be noted that the main branch of the management bank was functioning in the same building where the Head Office of the then bank of Cochin was housed. So, there was no difficulty for the main branch to make an enquiry about the said cheque with the Head office. The failure on the part of the main branch officials would give a clear indication that there was nothing on the face of the cheque to doubt the purchase of the cheque made by the Mulavukad branch.

X. MW3 has categorically admitted the fact that the cheque with the payee "Bank of Cochin, Account C. V. Vinayakan" can be encashed through an account with any branch of Bank of Cochin. He further deposed that there was no hindrance in encashing that cheque by opening a new account with any one of the branches of the bank of Cochin.

His case that in that instance drawer new account has also to be added cannot be accepted. He admitted that there is no such order or regulation in the bank to incorporate the word drawer new account. So, the evidence of MW3 would also give an indication that the action of the workman as the manager of the Mulavukad branch in purchasing the said cheque was only just and proper.

XI. There is nothing on record to show that the workman conspired with Mr. C. V. Vinayakan in the transaction of the said cheque. The workman as WW1 has categorically deposed about the circumstance under which he purchased the cheque and also about the circumstance under which he got acquaintance with Mr. C. V. Vinayakan. There is nothing on record to doubt the bonafides of the workman in his transaction with Mr. C. V. Vinayakan. Thus in all respects, the workman cannot be found guilty of the alleged misconduct of fraud or causing financial loss and wilful damage to the interest and affairs of the bank.

XII. The statement in the memorandum of charge to the effect that the Insurance Company had taken all necessary precautionary measure to protect the interest of the Bank by issuing an account payee cheque favouring "Bank of Cochin, Account Sri. C. V. Vinayakan" superscribing on the face of the cheque "claim disbursement account" cannot be accepted as a true statement. On the other hand, the available evidence on record would clearly show that the Insurance Company did not take any precautionary measures to protect the interest of the Bank. On the other hand, they neglected to protect the interest of the Bank. It is to be noted that the Manager of the Ernakulam south Branch of the bank of Cochin had issued an advance receipt for the said cheque. Then, it was the duty of the Insurance Company to send the said cheque directly to the said branch. But the Insurance Company failed in doing so. They did not give a clear indication in the cheque to the effect that the said amount covered by the cheque is to be credited in the loan account of M/s. Rani Poultry Farm. It is to be noted that the loan account was in the name of M/s. Rani Poultry Farm, Ext. M1(e) and Ext. M1(f) documents would reveal this fact. It is further to be noted that the name of Mr. C. V. Vinayakan will not find a place in Ext. M1(e) and M1(f) statement of accounts. So the failure to mention the name of M/s. Rani Poultry Farm was also an omission on the part of the Insurance Company. Thus, the statement of the management in the memorandum of charges that the insurance company had taken all necessary precautionary measures to protect the interest of the Bank cannot be correct. Had the Insurance Company was vigilant in protecting the interest of the Bank, there would not have any such incident happened. Another aspect to be noted is that the said Insurance Company on a previous occasion sent a cheque in respect of another claim related to one Mrs. Mary Varghese direct to the Mulavukad branch of the bank of Cochin. Ext. M1(n) registered letter sent by the Insurance Company to the Mulavukad Branch would reveal this fact. Ext. M1(g) details furnished by the Personnel Department of the Bank of Cochin would also establish these facts regarding the claim settlement of Mrs. Mary Varghese. Thus the workman herein as the Manager of the Mulavukad branch is fully justified in believing the version given by Mr. C. V. Vinayakan that the said cheque was only in respect of this claim related to the vehicle owned by him. So, there was no malafide on the part of the workman in purchasing the said cheque issued to the payee "Bank of Cochin, Account C. V. Vinayakan".

XIII. The workman Sri. M. J. John submitted the explanations to the memo of charges dated 7-2-1985. Ext. M1(i) is the said explanation submitted by him. In the said explanation he has categorically stated about the reasons which tempted him to purchase the said cheque for Rs. 32,399/-. The case of the workman regarding his innocence in the said charge of misconduct of fraud etc. was upheld by the Hon'ble High Court of Kerala in Criminal Appeal No. 443/87. Ext. W1 is the certified copy of the judgement in Criminal Appeal No. 443/87. The said appeal was preferred by the management herein from the order passed by the Additional Chief Judicial Magistrate, Ernakulam in CC. No. 329/84. The management was the complainant in that C.C. No. 329/84. MW2 was also a witness on the side of the prosecution. A charge sheet was framed against the workman and the said Mr. C. V. Vinayakan under Sec. 403 and 408 read with 34 for Indian Penal Code. The criminal Court acquitted the workman who was the second accused in the criminal case. The said acquit-



tal was upheld by the Hon'ble High Court of Kerala by virtue of Ext. W1 judgment passed in Criminal Appeal No. 443/87. The Hon'ble High Court has held that the cheque issued with the payee as M/s. Bank of Cochin, Account Mr. C. V. Vinayakan can only be encash through the account of Sri. C. V. Vinayakan, that the words M/s. Bank of Cochin Account Mr. C. V. Vinayakan indicate that the encashment of the cheque would be done only through the Account of Mr. C. V. Vinayakan. Thus, the Hon'ble High Court fully accepted the case of the workman herein. The workman herein had a Hon'ble acquittal by the Chief Judicial Magistrate Court and the same was confirmed by the Hon'ble High Court of Kerala. So, this circumstance would support the case of the workman that he was innocent in the matter of the purchase of the said cheque.

XIV. It is an admitted fact that the amount covered by the said cheque was credited in the account of Mr. C. V. Vinayakan. It is true that the said amount was withdrawn on different days between 3-1-1983 and 19-1-1983. But, it is pertinent to note that the amounts were permitted to be withdrawn only after the cheque was passed by the main branch. The cheque was sent to the main branch for collection and the amount was collected through the main branch. Only afterwards, the amount in the account of Mr. C. V. Vinayakan was withdrawn. The fact that the said amount covered by the cheque was withdrawn on different days between 3-1-1983 and 19-1-1983 cannot be taken as a ground to hold that there was collusion between the workman and the said Mr. C. V. Vinayakan. But the workman as Manager of the Mulavukad branch is legally bound to permit the account holder to withdraw the amount which is in the credit of the account holder. Thus, there is nothing available on record to hold that there was collusion between the workman and Mr. C. V. Vinayakan in the purchase of the cheque. The reason stated by the workman for the purchase of the said cheque on 30-12-1982 can only be believed. There is no other circumstance available to disbelieve the said case of the workman.

XV. The facts, circumstance and evidence of this case would clearly show that the then Manager of Ernakulam South branch was negligent in the matter. The Manager of the Ernakulam South Branch of Bank of Cochin issued an advance receipt for the said amount of Rs. 32,399. Then it was his duty to get the cheque collected from the Insurance Company. But the Manager did not take any steps in collecting the cheque for the said amount of Rs. 32,399. MW2 who made an enquiry into this matter categorically reported in Ext. M1(a) dated 25-7-1984 about the irresponsible act of the then Manager of the Ernakulam South branch, Mr. T. J. John. But it is strange enough to note that the said Mr. T. J. John, the then Manager of the Ernakulam South branch is even now in the service of the management bank. MW2 has deposed that to his knowledge no action was taken against the said T. J. John, the then Manager of the Ernakulam South Branch of Bank of Cochin. MW3 has also deposed that no charge sheet was issued against the said T. J. John for the said irresponsible way off doing things. But on the other hand, the workman herein was charge sheeted and imposed the maximum punishment of dismissal. Thus, the said action of the management cannot be justified. It is further to be noted that the workman herein was punished for his unauthorised actions and thereby he was demoted from the post of Manager to the post of an ordinary clerk. Thus in all respects, the punishment imposed on the workman cannot be upheld. On the other hand, the workman Mr. M. J. John deserves a clean acquittal in respect of the charges contained in Ext. M1(a) memorandum of charges dated 7-2-1985. Hence, I have no hesitation to set aside the punishment of dismissal imposed on Sri M. J. John. The prayer of the workman for his reinstatement with full back wages and other attendant benefits is to be allowed. I do so.

XVI. In the result, the action of the management in dismissing Sri M. J. John, Clerk with effect from 29-5-1986 is held as unjustified. The punishment of dismissal imposed on the workman is set aside. The management is directed to reinstate the workman with full back wages and other attendant benefits. An award is passed accordingly. Ernakulam, 10-2-1993.

M. V. VISWANATHAN, Presiding Officer

## APPENDIX

### Witnesses examined on the side of Management :

- MW1 Sri C. J. Joseph.
- MW2. Sri Johny Josepn.
- MW3. Sri P. I. Thomas.

### Witness examined on the side of Workman :

- WW1. Sri M. J. John.

### Exhibits marked on the side of Management :

- Ext. M1. File containing proceedings and report of domestic enquiry.
  - Ext. M1(a) Report of Sri Jony Joseph, Manager, O&M Department dated 25-7-1984.
  - Ext. M1(b) Photo copy of cheque date 29-12-1982.
  - Ext. M1(c) Photo copy of account of Sri C. V. Vinayakan with Mulavukad Branch.
  - Ext. M1(d) Photo copy of page No. 35 of C.B.P. Register.
  - Ext. M1(e) Copy of account of Rani Paultry Farm with the Ernakulam South Branch.
  - Ext. M1(f) Copy of account of O.D. 23 of Rani Paultry Farm.
  - Ext. M1(g) Letter dated 10-5-1985 from Bank of Cochin Mulavukad to the Manager, Personal Department, Bank of Cochin, Ernakulam.
  - Ext. M1(h) Copy of memo of charges dated 7-2-1985.
  - Ext. M1(i) Copy of explanation of workman dated 12th February, 1985.
  - Ext. M1(j) Photo copy of letter dated 5-1-1984 of Bank of Cochin addressed to the workman.
  - Ext. M7(k) Photostat copy of Report of Enquiry dated 25-11-1983.
  - Ext. M1(l) Photostat copy of the letter dated 19-2-1982 from United India Insurance Co. Ltd. to the Bank of Cochin Ltd.
  - Ext. M1(m) Representation of the workman dated 13th August, 1985.
  - Ext. M1(n) Photostat copy of letter dated 10-7-1986 from the workman to the Management.
- Exhibits marked on the side of the workman :
- Ext. W1. Photostat copy of judgement dated 3-8-1988 in criminal appeal No. 443/87.
  - Ext. W2. Photostat copy of order dated 24-12-1988 in CC. No. 149/87.

## ANNEXURE

### IN THE CENTRAL GOVERNMENT, LABOUR COURT, ERNAKULAM

(Monday, the 4th day of November, 1991)

### PRESENT :

Shri R. Raveendran, B.A. B.L., Presiding Officer.  
Industrial Dispute No. 8 of 1989 (C)

### BETWEEN

The Regional Manager, Region I, State Bank of India,  
Regional Office, Ernakulam, Cochin-31, Kerala-  
682031.

### AND

The workman, represented by the General Secretary,  
Bank of Cochin Employees' Association.

### REPRESENTATIONS :

B. S. Krishnan and Associates,  
Advocates, Warriam Road,  
Ernakulam.  
A. V. Xavier, Advocate,  
Ernakulam.

...For Management.

...For Union.

### PRELIMINARY ORDER

"Whether the action of the Regional Manager, (Region-I),  
State Bank of India, Ernakulam, in dismissing Shri M. J.

John, Clerk, w.e.f. 29-5-1986 for certain alleged misconduct brought out in charge sheet dated 7-2-1988 is justified? If not, to what relief Shri M. J. John is entitled to?" is the issue referred for adjudication to this Court as per order No. L-12012(268)/88-D.III(A) dated 23rd March, 1989.

2. The Union has filed claim statement stating as follows :—

The workman was charge-sheeted on 7-2-1985, alleging collusion with one Shri C. V. Vinayakan to defraud the management Bank to the tune of Rs. 32,399 in purchasing a cheque. In his explanation the workman denied the charges. As his explanation was not satisfactory, an enquiry was ordered and Advocate C. T. Joseph was appointed as enquiry officer. As the management had already filed a criminal case—C.C. 329/1984—against the workman before the judicial First Class Magistrate's Court, Ernakulam, he could not give evidence before the enquiry, lest it should affect him adversely in the criminal case. The finding in the enquiry was unfair, perverse and vitiated. Although there was absolutely no evidence in the enquiry to show that the workman had colluded with Shri Vinayakan to defraud the management Bank, the enquiry officer had found the workman guilty. Thereupon, the management accepted the findings of the enquiry officer and ordered the termination of service of the workman. The workman made an appeal to the Chief Regional Manager, the Appellate Authority, to which no reply has been given so far. The management had reported this case to the police and the workman was prosecuted which ended in his acquittal. The management had preferred a criminal appeal before the Hon'ble High Court of Kerala, Ernakulam which too had found the workman not guilty and the criminal appeal filed by the Bank was dismissed. The action of the management is based on the biased and perverse findings of the enquiry report. The management witnesses have not been competent to speak about the charges levelled against the workman. The documents do not supply sufficient and satisfactory evidence to lead to the findings in the enquiry report. The enquiry report is based on mere surmises. The action of the management is unjustifiable as it is based on the biased and perverse findings of the enquiry report. So the workman is entitled to the relief of reinstatement with full back wages and all other attendant benefits. Even if the management finds the workman guilty of the charges alleged against him, the punishment meted out is excessive. The workman is 53 years old. So this is a fit case to exercise the discretionary power of the court under section 11A of the I.D. Act. So he may be reinstated in service with full back wages.

3. The management has filed counter statement contending as follows :

The reference is not maintainable. Shri M. J. John, employee of the erstwhile Bank of Cochin was charge-sheeted on 7-2-1985. On the allegations that on 30-12-82, he purchased a cheque No. ENK 0146735 for an amount of Rs. 32,399 dated 29-12-82 drawn on Bank of India, Shanmugham Road, Ernakulam, issued by the New India Assurance Co. Ltd., in full and final settlement of an insurance claim made by M/s. Rani Poultry Farm, owned by Shri C. V. Vinayakan, from the said Shri C. V. Vinayakan and proceeds of the said cheque was credited to S.B. Account No. 2264, a new account in the name of Shri C. V. Vinayakan which was opened on the very same day with a view to just encashing the said cheque. The Rani Poultry Farm was a unit financed by the Ernakulam South Branch of the Bank of Cochin and the amount represented by the cheque was due to the loan account of the said Sri Vinayakan. The Insurance Company has taken all necessary precautions to protect the interest of the bank by issuing an account payee cheque favouring "Bank of Cochin Ltd., Account C. V. Vinayakan" superscribing on the face of the cheque as "Claim disbursement Account". Shri M. J. John allowed to encash the amount as per the cheque overlooking the indications on the face of the cheque after purchasing the cheque unauthorisedly and without proper authority. The entire amount was drawn by Shri Vinayakan on 3rd January, 1993 (Rs. 18,000) 5-1-1983 (Rs. 10,000), 11th January, 1983 (Rs. 4,000) and 19-1-83 (Rs. 375). It was alleged that there was collusion between Shri John and Shri C. V. Vinayakan and that he had committed fraud, gross misconduct, violation of head office instructions with vested interests, causing financial loss and willful damage to the interest and affairs of the bank. The workman submitted a reply denying the charges. The management was Shri C. T. Joseph, Advocate, Ernakulam

as the enquiry officer to enquire into the charges. The enquiry officer conducted an enquiry into the charges in compliance with the principles of natural justice and submitted a report. In the enquiry the workman has fully participated and cross examined the management witness and adduced defence evidence. On the materials on record, the enquiry officer, found that the workman was guilty of the charges. Bank of Cochin was later amalgamated with State Bank of India. The Disciplinary Authority concurred with the findings of the enquiry officer and imposed the penalty of dismissal from service. The past record of the employee is blemished and tainted. He was suspended from service on 22-6-83 and charge sheeted on 13-9-83 for having granted certain advance in an unauthorised manner and without Head Office instructions, while working as Manager of Mulavukad Branch. Subsequently he was awarded the punishment of demotion as a clerk with effect from 5-1-84. Even on a previous occasion he had been demoted as a clerk on account of his misconducts. Therefore the workman does not deserve any sympathetic consideration. The averments of the Union that the workman could not give evidence before the enquiry officer due to the pendency of criminal case is false. The attack on the findings of the enquiry officer is also not sustainable. The findings are supported by legal evidence. The nature of evidence of the procedure to be followed in departmental enquiry is totally different from that of any criminal courts. The findings rendered by criminal court has no bearing in the matter. The enquiry into the charges levelled against the workman is perfectly legal and valid and is not assailable in any manner. The management may be permitted to adduce evidence afresh to establish the charges.

4. The points that arise for consideration are whether the enquiry conducted by the enquiry officer is legal and proper and the findings entered by the enquiry officer is supported with legal evidence.

5. The union has filed reply statement reiterating his claims in the claim statement and refuting the contentions in the written statement.

6. For the management MW1 was examined and Ext. M1 is marked.

7. Point : The workman Shri M. J. John was working as Clerk in the management bank. While so he was served with a show cause notice why disciplinary action should not be initiated for the misconduct he committed while he was working as a branch Manager, Mulavukad Branch of the management bank. He submitted his explanation in pursuance of the notice denying the charges. Not satisfying with the explanation submitted by him, the management ordered a domestic enquiry by appointing a domestic enquiry officer. The enquiry officer conducted the enquiry and made the report Ext. M1 finding the delinquent guilty of charges. Accepting the findings of the enquiry officer the management dismissed him from service. Aggrieved by the said order of dismissal the union espoused the cause by raising an Industrial Dispute, which culminated in this reference.

8. The union is challenging the enquiry report and the finding of the enquiry officer on the grounds that the enquiry was conducted in violation of the principles of natural justice and the findings are perverse not supported with legal evidence. The enquiry officer was examined as MW1 who would depose that the delinquent has been given sufficient opportunity of being heard. The delinquent was participating in the enquiry. He cross examined the witnesses of the management and he examined his own witnesses to prove his innocence. And the enquiry officer entered the finding that the workman is guilty of misconduct relying on the legal evidence available in the enquiry. On perusal of the testimony of MW1 and Ext. M1 file containing the proceedings and the findings of the enquiry officer, it can be seen that the enquiry officer has given sufficient opportunity to the delinquent of being heard and the delinquent has participated in the enquiry also. In these circumstances, I find that the enquiry conducted by the enquiry officer is in strict compliance of the principles of natural justice.

9. Concerning the finding, the misconduct alleged against the delinquent is that the delinquent has colluded with Shri Vinayakan to defraud the Bank. According to the management bank on 30-12-82 the workman then branch manager, Mulavukad purchased a cheque No. ENK 0146735 for an



amount of Rs. 32,399 dated 29-12-82 drawn on bank of India, Shanmugham Road, Ernakulam, issued by the New India Assurance Co. Ltd., in full and final settlement of an insurance claim made by M/s. Rani Poultry Farm, owned by Shri C. V. Vinayakan, from the said Shri C. V. Vinayakan and proceeds of the said cheque was credited to S. B. Account No. 2264, a new account in the name of Shri C. V. Vinayakan which was opened on the very same day with a view to just encashing the said cheque. The Rani Poultry Farm was a unit financed by the Ernakulam South Branch of the Bank of Cochin and the amount represented by the cheque was due to the loan account of the said Shri C. V. Vinayakan. The insurance company has taken all necessary precautions to protect the interest of the bank, by issuing an Account payee cheque favouring "Bank of Cochin Ltd., Account C. V. Vinayakan" superscribing on the face of the cheque as "Claim disbursement ment Account". The delinquent allowed to encash the amount as per the cheque overlooking the indications of the face of the cheque, after purchasing the cheque unauthorisedly. The entire amount was drawn by Shri. Vinayakan on 3-1-83 (Rs. 18,000) 5-1-83 (Rs. 10,000) 11-1-83 (Rs. 4,000) and 19-1-83 (Rs. 375). It was alleged that there was collusion between Shri John and Shri C. V. Vinayakan, and that he had committed fraud, gross misconduct, violation of head office instructions with vested interest, causing financial loss and willful damage to the interest and affairs of the bank. But according to the union while working as Manager Mulavukad, Bank of Cochin, the workman purchased on 30-12-82 from C. V. Vinayakan a cheque for Rs. 32,399 dated 29-12-82 drawn on bank of India, Shanmugham Road, Ernakulam main branch in favour of M/s. Bank of Cochin, A/c. Mr. C. V. Vinayakan by the New India Assurance Co. Ltd., and sent it for clearance to the Main Office of the Bank of Cochin at Ernakulam. Vinayakan opened the account in the Mulavukad Branch of the Bank of Cochin while the delinquent was the Manager and withdrawn from his account through cheques Rs. 18,000 on 3-1-83, Rs. 10,000 on 5-1-83, Rs. 4,000 on 11-1-83 and Rs. 375 on 19-1-83. It is true that the delinquent purchased the cheque from C. V. Vinayakan an A/c. payee for Rs. 32,399 dated 29-12-1982, drawn on Bank of India, Ernakulam in favour of M/s. Bank of Cochin A/c. Mr. C. V. Vinayakan by the New India Assurance Co. Ltd. It is to be noted that an a/c. payee cheque favouring Bank of Cochin, Account C. V. Vinayakan means only that the cheque can be encashed only through a Bank of Cochin A/c. of C. V. Vinayakan. The superscription claim disbursement A/c. means only that it was from the claim disbursement account of the Insurance Company. From the cheque it cannot be seen that it is issued in favour of the management bank for realisation of the loan amount outstanding in the name of Vinayakan in the management bank. It is also to be noted that the name of the branch is not noted in the cheque. MW1 would depose that he did not know which instruction was violated by the delinquent in purchasing the cheque. It is also to be noted that the cheque was sent it for clearance to the Main Office of the Bank of Cochin at Ernakulam. If the amount had to be adjusted in the loan taken by Shri. Vinayakan, the Main office could have given direction to the Manager of the Mulavukad Branch for stopping payment. It is also pertinent to note that there was absolutely no evidence in the case to show that there is collusion between the workman and Shri. Vinayakan nor had the workman committed any fraud or misconduct, causing financial loss and willful damage to the interest and affairs of the bank by purchasing the cheque. It is also to be noted that the loan amount outstanding in the name of Vinayakan can be realised by following other methods, since this loan would be secured by sufficient securities. In these circumstances, I hold that there is absolutely no evidence to show that the workman has colluded with Vinayakan in purchasing the cheque, for Rs. 32,399 and thereby defrauded the bank. Therefore the finding of the enquiry officer that he has committed the misconduct of collusion with one Vinayakan to defraud the management bank to the tune of Rs. 32,399 in encashing a cheque is perverse as it is not supported with legal evidence. But in view of the contention of the management that in case it is found that the finding is perverse or unsustainable the management may be permitted to adduce fresh evidence to substantiate the misconduct. The Management is at liberty to adduce fresh evidence to prove the charges.

10. In the result, a Preliminary Order is passed finding that though the enquiry conducted by the enquiry officer is 738 GI/93-4

in accordance with the principles of natural justice, the finding entered by the enquiry officer is perverse, but the case is posted for the fresh evidence of the management to substantiate the charges.

M. V. VISWANATHAN, Presiding Officer

नई दिल्ली, 15 मार्च, 1993

का.प्र. 729:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इन्डस्ट्रियल टॉक्सिकोलॉजी रिसर्च सेंटर लखनऊ के प्रबंधन के संबंध निराकरणों और उनके कर्मचारियों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 12-3-93 को प्राप्त हुआ था।

[संख्या एन-42012/63/87-बी 2(बी) (पीडी)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 15th March, 1993

S.O. 729.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Industrial Toxicology Research Centre, Lucknow and their workmen, which was received by the Central Government on 12-3-93.

[No. L-42012/63/87-D.II(B)(Pt.)]

K.V.B. UNNY, Desk Officer

#### ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 257 of 1989

In the matter of dispute between :

Sri V. K. Singh, C/o Sri O. P. Nigam, 295/387 Deen Dayal Road, Asharfabad, Lucknow,

#### AND

The Director, Industrial Toxicology Research Centre, Mahatma Gandhi Marg, Lucknow.

#### AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-42012/63/87-D.2(B) dated 3rd October, 1989 has referred the following dispute for adjudication to this Tribunal:—

Whether the Director, Industrial Toxicology Research Centre, Lucknow was justified in terminating the services of Sri V. K. Singh, as Contingent Paid Staff w.e.f. 21-4-86? What relief the workman was entitled?

2. The case of the workman in short is that he was appointed as Contingent Paid Staff (hereinafter referred to as C.P.S.) in the Industrial Toxicology Research Centre, Lucknow (hereinafter referred to as I.T.R.C.) on 4-4-83, to work as a Clerk-cum-Typist and for preparation of Tender Papers, Estimate etc., on a consolidated salary of Rs. 300 per month. His services were extended from time to time without any break upto 21-4-86, whereafter, his services were terminated illegally by the management of I.T.R.C., Lucknow. During the period of his working his salary was enhanced from time to time and at the time of termination of his services his salary was Rs. 400 per month. He alleges that he was allowed to appear in the examination held by the Institute for appointment of permanent clerk. He has, therefore, prayed for his reinstatement as a permanent hand on the clerical post held by him with full back wages and all consequential benefits.

3. The case is contested by the management of I.T.R.C., Lucknow. The management plead that the Central Government was not the appropriate government to make the present reference and as such the present reference is bad in law. According to the management, the council of Scientific and Industrial Research (hereinafter referred to as C.S.I.R.) New Delhi is a Society registered under the Societies Registration Act with the Prime Minister of India as its Ex-Officio President. C.S.I.R. as its own Rules and Regulations and Bye Laws for regulating appointments promotions and other functions and activities. I.T.R.C., Lucknow is a Unit of C.S.I.R. It is merely a Research Institute to develop wage and means of protecting of all the harmful effect on the workers of the various industries etc., therefore, I.T.R.C. is not an industry. The study/research on any scheme sponsored by outside organisation is carried out under the supervision of Scientist Incharge. Scientists take the services of the subordinate staff for the scheme sponsored by outside Agency and engage persons of their own choice for fixed period on consolidated wages. The payments to persons so engaged are made from the contingencies of the schemes and that is why employees so engaged are designated as C.P.S. Similarly Sri V. K. Singh, was appointed as CPS on a particular project sponsored by an outside sponsor for the first time. His last engagement as CPS expired on 31-3-86 whereafter he was not called upon to attend to his work. But despite that Sri Singh continued attending office till 21-4-86. To compensate him a sanction for 21 days was allowed as a special case. The Director I.T.R.C. never appointed him nor he ever terminated his services. He was not a typist or a clerk. He never prepared any Tender Paper, Estimate etc. In the alternative the management plead that his appointment being for fixed periods with breaks, his case is covered by the provisions of section 2(o)(bb) of the Act. The management deny that Sri Singh was ever barred from appearing in any examination held by the Institute for appointment to the post of Clerks. Thus the claim of Sri Singh is not tenable at all.

4. In support of their respective cases both sides have led oral as well as documentary evidence.

5. In the instant case, two legal pleas have been raised, one is that the reference is bad in law inasmuch as the Central Government is not the Appropriate Government to make the reference and the second is that the I.T.R.C., Lucknow, being predominantly a Research Organisation is not an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947.

6. The question of making reference by the Central Government or the State Government arises only if I.T.R.C., Lucknow is held as an Industry. Therefore, I shall deal with the second point first.

7. In L.C.A. No. 18 1990 Sri Muneshwar Lal Vishwakarma versus The Director, Industrial Toxicology Research Institute, Lucknow, I have already held that I.T.R.C. Lucknow is not an Industry, and I see no reason to differ with the view expressed by me in the said case.

8. Sri O. P. Nigam, the auth. representative for the workman Sri V. K. Singh, in support of his contention, has placed reliance on the following rulings—

1. Bangalore Water Supply & Sewerage Board versus A. Rajappa, 1978 (1) LLJ 349 S.C.)
2. Desraj versus State of Punjab 1988, Lab. IC 1713 (SC).

In the other hand Sri Bhasin, the auth. representative for the management has placed reliance on some orders and awards given by Central Administrative Tribunals, Allahabad (Circuit Bench, Lucknow), Ernakulam and Industrial Tribunal, Tamil Nadu.

9. I may state here that in the present case the management have filed copies of C.S.I.R. Administrative Services (Recruitment and Promotion) Rules, 1982 and Rules and

Regulations and Byelaws of CSIR. From the copy of Bye Laws it is evident that C.S.I.R. is registered under Societies Registration Act XXI of 1860. The Rules Regulations and Byelaws contain a list of National Laboratories/Instituted Centres of C.S.I.R. The name of I.T.R.C. Lucknow appears at serial No. 24 of the said list. Now, if C.S.I.R. is held as not an Industry, the same would apply to I.T.R.C., Lucknow.

10. In O.A. No. 188/90(L) Suresh Kumar Mishra Versus Union of India and others the bench of Central Administrative Tribunal Allahabad, Circuit Bench Lucknow, in its order dated 2-7-91, after considering the ruling of the Hon'ble Supreme Court in Bangalore Water Supply has held that C.S.I.R. is not an Industry. The Bench was dealing with the case of an employee of Central Drug Research Institute, Lucknow. This Institute is also named at serial no. 3 in the list of National Laboratories/Institutes/Centres of C.S.I.R. About this Institute, it was observed by the Bench that it is a Research Institute and it also does not produce or manufacture things which may bring it within the meaning of word 'Industry'.

11. In case no. TAK No. 768/87/U.P. No. 4432/83 M. Parmeshwar Pillai Versus C.S.I.R., New Delhi and others, the Hon'ble Vice Chairman in his order dated 8-2-89 held that CSIR is not an industry. In para 5 of the order the Hon'ble Vice Chairman placed reliance on the ruling of the Hon'ble Allahabad High Court in Ramesh Chandra versus Union of India 1981 Lab. I.C. 781. It was observed by the Hon'ble Vice Chairman that the Hon'ble High Court while applying the criteria laid down by the Hon'ble Supreme Court in Bangalore Water Supply held that the National Sugar Institute being predominantly a Research Institute and its objective being of device wages and means of economising the sugar production and to make the working of the sugar mills more efficient could not be held to be an Industry.

12. In Award dated 22-3-89, in I.D. No. 60 of 1985, in the matter of dispute between the workman and the management of National Environmental Engineering Research Institute, Nagpur and Thiru P. T. Sampanda, the Industrial Tribunal, Tamil Nadu held this institute as not an Industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947. I may state here that the name of this institute also find place at serial no. 28 of the aforesaid list of National Laboratories/Institutes/Centres of C.S.I.R.

13. Thus we find that the ruling in the case of Bangalore Water Supply was considered by Central Administrative Tribunal, Allahabad and C.A.T. Ernakulam. The other ruling cited by Sri Nigam, on behalf of the workman, is in respect of Irrigation Department, which has nothing to do with Research Work.

14. Hence, it is held that I.T.R.C., Lucknow is not an Industry, within the meaning of section 2(j) of the Act.

15. It being so, reference irrespective of the fact whether made by Central Government of State Government, is bad in law. As such I need not go into the merits of the case.

16. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 17 मार्च, 1993

कां.प्र. 730 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार खाद्योद्योगिकी कमीशन बम्बई के प्रबन्धतंत्र के संबंध आयोगकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बीकानेर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-3-93 को प्राप्त हुआ था।

[सं. एम-42011/7/83-डी2(बी) (पीटी)  
के. बी. बी. उज्ज्वी, डेस्क अधिकारी

New Delhi, the 17th March, 1993

S.O. 730.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bikaner as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Khadi and Village Industries Commission and their workmen, which was received by the Central Government on 16-3-1993.

[No. L-42011/7/83-D.II (B) (P)]

K. V. B. UNNY, Desk Officer

अनुसूच

औद्योगिक न्यायाधिकरण, जिला बीकानेर

केंद्रीय औद्योगिक विवाद प्र. सं. 2/1988 (पुनरा 4/1984 केंद्रीय

न्यायाधिकरण, जयपुर)

सचिव खादी कमीशन कर्मचारी यूनियन बाहेली भवन, रानी बाजार बीकानेर।

—प्रार्थी संघ

—बनाम—

1. खादी कमिशन जरिये प्रथम खादी एवं ग्रामोद्योग, झरणा रोड बिदे पार्क (पश्चिम) बम्बई-56
2. निदेशक खादी एवं ग्रामोद्योग आयोग, झरणा रोड विन्नेपाल (पश्चिम) बम्बई-56
3. निदेशक खादीग्रामोद्योग, महेश मांग सी-स्क्रीम जयपुर।
4. सहायक निदेशक, खादी ग्रामोद्योग आयोग बाहली भवन, रानी बाजार, बीकानेर।

—नियोजक / अप्रार्थी

निर्देश अंतर्गत धारा 10(1) (घ) ओ. डि. अक्टि 1947 एवं धारा 14 ओ. डि. अधिनियम 1947 उपस्थिति :—

न्यायाधीश श्री जगन्मिह आर. एच. जे. एस.

1. श्री भरतमिह मेगर व भरविश मेगर अधिवक्तागण प्रार्थी की ओर से
2. श्री विपिन चन्द्र गोयन अधिवक्ता अप्रार्थी की ओर से

अभिनिर्णय

दिनांक

श्रम एवं पुनर्वास मंत्रालय भारत सरकार, नई दिल्ली ने अपनी अधिसूचना क्रमांक एल—42011(7/83/डी-II (बी) दिनांक 19 नवम्बर, 1993 द्वारा निम्नलिखित निर्णय जारी किया जिसका अर्थ निम्नलिखित पड़ाया है :—

"Whether the management of Khadi and Village Industries Commission in relation to their establishment at Jaipur is justified in refusing to regularise the 19 female workmen (as per names of workmen given in the Annexure below and to terminating their services with effect from 31st May, 1981 instead. If not, to what relief are the workmen entitled?"

(ANNEXURE)

1. Smt. Sugra Chungar W/o Shri Ismail
2. Smt. Ghapi Bheni W/o Shri Narainram

3. Smt. Munni Saxen W/o Shri Salaudin
4. Smt. Champa Beni W/o Shri Bhagwanram
5. Smt. Hasina Chungar W/o Shri Hassan Ali
6. Smt. Mohraj Chungar W/o Shri Mohd. Hanif
7. Smt. Nazma Chungar W/o Shri Abdul Samad
8. Smt. Zmila Chungar W/o Mohd. Hussain
9. Smt. Marium Chungar W/o Shri Ishav
10. Smt. Sugra Chungar W/o Shri Abdul Hanif
11. Smt. Anvari Damaman W/o Shri Akhat Ali Bikaner
12. Smt. Devi Sunari W/o Shri Mangharam
13. Smt. Bhanwari Damaman W/o Shri Akbar
14. Smt. Babuji Damaman W/o Shri Kedarbux
15. Smt. Hazra Chungar W/o Shri Noor Mohd
16. Smt. Sakina
17. Smt. Kanija
18. Smt. Suraj
19. Smt. Gomti Bai

2. महिला खादी कर्मचारी यूनियन रानी बाजार बीकानेर जिसको तत्पश्चात् प्रार्थी संघ संबोधित किया है ने जरिये क्वेस प्रकट किया है कि बाद प्राप्त 19 महिला कर्मचारीगण अप्रार्थी सं. 4 के अधीन अनेक वर्षों से कार्यरत थीं और प्रत्येक महिला कर्मचारी ने प्रत्येक कलेण्डर वर्ष में 240 दिवस में अधिक सेवा प्रश्रय पूरी कर ली थी इस लिये लगातार काम करने वाली औद्योगिक कर्मचारी बन गई थीं फिर भी अप्रार्थी ने उनकी दैनिक वेतन पर ही सेवा में लगाये रखा तथा उनकी सेवाएं निर्दिष्ट नहीं कीं। प्रार्थी संघ कहता कि प्रतिरिक्त श्रम स्वायत्त सं. 2 स. 2 राज. जयपुर में श्रम विवाद सं. एल. सी. 247/75 खादी कमीशन कर्मचारीगण यूनियन बीकानेर बनाम खादी ग्रामोद्योग बोर्ड बम्बई बनाम या जिनमें 21-9-77 को प्रकाश पारित हुआ जिसके अनुसार वादग्रस्त 19 महिला कर्मचारियों की सेवाएं खादी कमीशन में नियमित करने का अधिनियम दिया था परन्तु इस पर भी अप्रार्थी सं. 4 ने इन महिला कर्मचारियों की सेवाएं नियमित करने को बर्खास्त 30-5-81 को इनकी छंटनी कर दी। प्रार्थी संघ यह भी कहता है कि उस छंटनी से पूर्व इन सभी महिलाओं कर्मचारियों की बरिष्ठता सूची भी घोषित नहीं की गई थी और ना ही छंटनी से पूर्व एक माह का नोटिस दिया गया। यहां तक कि छंटनीवत्ता भी नहीं दिया इतिहास वादग्रस्त छंटनी औद्योगिक विवाद अधिनियम 1947 को धारा 25 एक के तहत होने से अवैध एवं शून्य हो जाती है। प्रार्थी संघ यह भी कहता है कि तथ्यांकित छंटनी भी प्रेश की भावना से की गई है। प्रत्येक एक इन महिलाओं को न्यायालय तौर से तंग करना रहा है। अवकाश के दिन प्रतिदिन करते हुये तथा जबरन छंटनी पुनः बुलाकर कर दी गई और इसके साथ दुर्व्यवहार भी किया गया है। प्रार्थी संघ की प्रार्थना है कि छंटनी प्रादेश अग्रस्त करते हुये इन 19 महिला कर्मचारियों को पुनः संज्ञित सेवा में लिया जावे तथा जिन कर्मचारियों का एक वर्ष में 240 दिवस की सेवा प्रश्रय पूरा कर ली है उनकी नियमित सेवा का लाभ भी दिलाया जावे।

अप्रार्थी सं. 4 ने जरिये प्रत्युत्तर क्वेस में क्वेस को स्वीकार करते हुये कहा है कि वादग्रस्त 19 महिला क्षेत्रीय विकास कार्यालय बीकानेर में उन सफाई का दैनिक वेतन पर करती थीं उक्त कार्य प्रश्रय हो चुका ऐसी परिस्थितियों में उन सफाई का कार्य करने वाली सभी 19 महिलाओं को छंटनी करने के प्रादेश विनांक 27-5-80 को जारी किये गये थे जिसके अनुसार दिनांक 37-5-81 से इन महिलाओं कर्मचारियों की छंटनी भी औद्योगिक विवाद अधिनियम 1947 को धारा 5 एक की पालना करते हुये की गई थी इन सभी महिलाओं की छंटनी का सूत्रावज्ञा तथा एक माह का वेतन नोटिस की एवज प्रकट किया गया था 05 महिला कर्मचारियों ने तो 30-5-81 को अपना सूत्रावज्ञा तथा नोटिस वेतन भी ले लिया था शेष चौदह महि

कर्मचारी मुजाबवा लेने नहीं आईं तो उनके घर के पते पर दिनांक 30-5-81 को ही मनीषादेवर द्वारा उक्त राशि भेज दी गई थी जिनमें से तेरह महिला कर्मचारियों ने तो 1-6-81 को मनीषादेवर के द्वारा राशि प्राप्त कर ली थी, एक महिला कर्मचारी बंबई आई थी, उसके बम्बई के पते पर मनीषादेवर भेजा गया था जो उसे 5-6-81 को प्राप्त हो गया था। अध्यापी ने यह भी कहा कि उनकी संस्था खादी व ग्रामोद्योग, जयपुर द्वारा संभालित होती है। उसके निदेशक ही छंटनी करने के आवेदन जारी किये थे। उक्त आदेश की अनुपालना में ही 31-5-81 को इन महिला कर्मचारियों की छंटनी की गई थी क्योंकि उन सफाई का कार्य काफी बहले से ही बंद हो चुका था। जबकि सभी महिला कर्मचारियों की छंटनी कर दी गई थी इसलिये इनकी वरिष्ठता सूची बनाना आवश्यक नहीं थी अध्यापी यह भी चाहता है कि बादप्रत्य 19 महिला कर्मचारियों में से 15 तो आपस में सेटलमेंट करके छंटनी को उचित मानते हुये समझौते पर अपने हस्ताक्षर भी कर दिये थे अध्यापी के अनुसार किसी भी महिला कर्मचारी को तब नहीं किया गया और ना ही पुलिस बुलाकर जबरन सेवा मुक्ती की कार्यवाही की गई है। उक्त तथ्य तो न्यायालय की मुआलमें में खोलने हेतु झूठे व मनगड़त क्लेम में दर्ज किये गये हैं। अध्यापी के अनुसार प्राथी संघ इस विवाद को बिना बणह मुस दे रहा है। छंटनी की गई महिलाओं न तो प्राथी संघ को विवाद उठाने हेतु कभी कहा और न ही प्राथी संघ द्वारा किसी सिटींग में उक्त विवाद उठाने हेतु कोई प्रस्ताव पारित किया गया। यहां तक कि कोई भी महिला कर्मचारी इस विवाद में बयान देने भी उपस्थित नहीं हुई। प्राथी संघ के कुछ पदाधिकारियों की व्यक्तिगत रंजिश के कारण ही बिपक्षी को परेशान करने के लिये विवाद बना रखा है जो खारिज करने योग्य है।

क्लेम के समर्पन में प्राथी संघ की तरफ से उनके सचिव श्री कन्हैयालाल जोशी ने स्वयं का शपथपत्र पेश किया है जिससे अध्यापी के प्रतिनिधि ने विरह की है। इसके विपरीत अध्यापी की तरफ से सर्वेधी करब मेहता, प्रेमसरन, रतनबाब, डुडिया न्यायांकर जर्मी, तथा मनोहर बाब छमानी के शपथपत्र पेश किये हैं जिससे संघ के प्रतिनिधि ने विरह की है। प्रत्येकीय साक्ष्य में भी प्रबल एम-ए-1 से एम-78 तक कोटो प्रतियां पेश की हैं।

तत्पश्चात् मैंने पक्षकारों के प्रतिनिधियों को विस्तारपूर्वक सूना, और पक्षावली का निरीक्षण किया।

अध्यापी ने प्रथम प्राथमिक घापति यह की थी कि सभी महिला कर्मचारियों ने छंटनी भत्ता स्वेच्छा से प्राप्त कर लिया था और 15 महिला कर्मचारियों ने तो अध्यापी के साथ लिखित समझौता भी कर लिया था और कोई भी महिला कर्मचारी विवाद उठाना नहीं चाहती थी ना ही किसी महिला कर्मचारी ने प्राथी संघ को विवाद उठाने हेतु प्रयत्न किया। प्राथी संघ ने भी इन महिलाओं का विवाद उठाने हेतु कोई प्रस्ताव भी पारित नहीं किया है। प्राथी संघ के कुछ पदाधिकारी ही व्यक्तिगत रंजिश के कारण अध्यापी को परेशान करने की मितल से ही इस विवाद को चला रहे हैं। हालांकि उक्त तथ्य का उल्लेख अध्यापी ने अपने प्रत्युत्तर में कर दिया था फिर भी प्राथी संघ की तरफ से न तो इसका कोई जवाब-उल-जवाब पेश किया गया और ना ही इस विषय में प्राथी संघ के सचिव श्री कन्हैयालाल जोशी ने अपने शपथपत्र में इस विषय में कुछ दर्ज किया। यहाँ तक अध्यापी के साक्ष्यों में भी इस विषय में संघ के प्रतिनिधि द्वारा प्रतिपरीक्षा नहीं की गई। श्री कन्हैयालाल जोशी ने अध्यापी के प्रतिनिधि ने इस विषय में सुझावात्मक प्रश्न किया तो श्री जोशी ने यह स्वीकार किया है कि उन्होंने विवाद उठाने बाबत प्रस्ताव की प्रति न्यायालय में पेश नहीं की है। श्री जोशी प्रतिपरीक्षा में तो कहते हैं कि महिला कर्मचारियों ने मौखिक रूप से उनको विवाद उठाने के लिये कहा था जिसके बाबत संघ ने प्रस्ताव भी पारित किया था। जिरह के दौरान तो श्री जोशी कहते हैं कि व उक्त प्रस्ताव की प्रति पेश कर देंगे परन्तु घाज बिन तक भी किसी प्रस्ताव की प्रति पेश नहीं की गई और ना ही ऐसी कोई मौखिक या प्रत्येकीय साक्ष्य पेश की गई जिससे यह प्रकट होता हो कि यह

महिला कर्मचारी प्राथी संघ की सदस्य थी और इन महिलाओं ने प्रा संघ को यह विवाद उठाने के लिये प्रयत्न किया है। यहां तक कि किसी महिला कर्मचारी को माध्य में भी पेश नहीं किया गया है। इसलिये, अभिलेख पर एसी माध्य उपलब्ध नहीं है जिससे यह साबित होता हो कि प्राथी संघ यह विवाद उठाने के लिये प्रयत्न किया गया था और अध्यापी को यह प्रथम घापति माग्बान होने में स्वीकार की जानी है।

श्री कन्हैयालाल जोशी सचिव प्राथी संघ ने अपनी प्रतिपरीक्षा में तो यह कहा है कि इन महिला कर्मचारियों को व चंदा प्रकट्टा करके भेजते हैं और इन महिला कर्मचारियों से मगर्क बनाये हुये हैं परन्तु श्री जोशी को यह जानकारी नहीं है कि इनमें से 15 महिला कर्मचारियों ने 30-5-81 को अपना हिसाब लिखा है तथा शेष तीन महिला कर्मचारी 1-5-81 को अपना हिसाब ले गईं। श्री जोशी को यह भी जानकारी नहीं है कि गोमती बाई महिला कर्मचारी बम्बई आयी गई है और उसे वहां पर मनीषादेवर द्वारा छंटनी भत्ता भेजा गया है। श्री जोशी को इन महिला कर्मचारियों की नियुक्ति की तारीख का भी ज्ञान नहीं है तथा इनको कितना वेतन मिल रहा था इसका भी ज्ञान श्री जोशी को नहीं है। सभी महिला कर्मचारियों को प्रत्युटी की राशि भी दे दी गई थी जिसका भी ज्ञान श्री जोशी को नहीं है। जिससे यही निष्कर्ष निकलता है कि वालन में छंटनी के उपरान्त से महिला कर्मचारी प्राथी संघ से मगर्क बनाये हुये नहीं हैं। धन्यवाद इन महिला कर्मचारियों की बाबत प्राथी संघ और उनके सचिव की जानकारी होनी और उनमें से किसी का परीक्षण तो कराया जाता।

प्राथी संघ का यह कहना है कि छंटनी से पूर्व वरिष्ठता सूची नहीं बनाई गई जिसके तथ्य को अध्यापी ने क्लेम के प्रत्युत्तर में स्वीकार करने हुए कहा है कि उन सफाई का काम बंद कर दिया गया था और उन सफाई का काम करने वाली सभी महिला कर्मचारियों की छंटनी कर दी गई थी इसलिए वरिष्ठता सूची बनाने की आवश्यकता नहीं थी उक्त तथ्य को अध्यापी के साक्ष्यों ने अपने शपथपत्र में उल्लेख किया है और उनसे इस तथ्य की बाबत प्राथी संघ के प्रतिनिधियों ने विरह भी नहीं की है। प्राथी संघ के सचिव श्री कन्हैयालाल जोशी भी इस विषय में प्रतिपरीक्षा करने पर स्वीकार करते हैं कि 31-5-81 के बाद से बीकानेर के आफिस में उन सफाई का काम नहीं होता यह काम घब खादी भविर बीकानेर ने कराते हैं इसलिए भी अभिलेख पर उपलब्ध साक्ष्य एवं स्वीकारावली से यह साबित है कि अध्यापी संस्था ने उन सफाई का पूरा विभाग ही बंद कर दिया है और उनमें कार्यरत सभी 19 दैनिक वेतनवाली महिला कर्मचारियों को छंटनी कर दी गई इन परिस्थितियों में मेरी राय में वरिष्ठता सूची बनाने की आवश्यकता नहीं थी।

क्लेम के अनुसार ही श्री कन्हैयालाल जोशी ने अपने शपथपत्र में यह दर्ज किया है कि छंटनी के समय एक माह का नोटिस दे दिया और ना ही छंटनी भत्ता दिया परन्तु इस विषय में श्री जोशी ने प्रतिपरीक्षा करने पर श्री जोशी ने अनभिज्ञता जाहिर की है कि 19 में से 05 महिला कर्मचारी 30-5-81 को अपना हिसाब करके पैसे ले गई है और शेष चौदह महिला 30-5-81 को अपने पैसे लेने नहीं आईं उनको उसी रोज मनीषादेवर उनके पता पर भेजा गया तो उनमें से तेरह महिला कर्मचारियों को 1-6-81 को मनीषादेवर प्राप्त हो गए और एक महिला कर्मचारी को उनके बम्बई मनीषादेवर पते पर 5-6-81 के द्वारा पैसा दे दिया गया है। इस विषय में श्री रतनबाब डुडिया, लेखाकार ने अपने शपथपत्र में दर्ज किया है कि 30-5-81 को भी महिला कर्मचारियों की छंटनी मुआबजा आफर किया गया था इनमें से पांच ने तो 30-5-81 की अपना मुआबजा प्राप्त कर लिया था शेष 14 कर्मचारियों को मनीषादेवर के जरिए मुआबजा कर दिया गया था। उन्होंने प्राप्त कर लिया है मनीषादेवर की रसीद एम-25 से एम-37 है जिसमें छंटनी भत्ता के साथ एक माह का वेतन नोटिस के एवज में भी दिया गया है श्री डुडिया ने यह भी कहा है कि 19 महिला

कर्मचारियों में से 18 को सेचुटी का नकद भुगतान भी 30-5-81 को ही कर दिया गया था जिसकी रसीद एम-38 से एम-54 है एक महिला कर्मचारी गोमती बाई बम्बई चली गई थी जिसने सेचुटी का भुगतान प्राप्त नहीं किया जो हमारे यहाँ जमा है जिसे वो कमी भी प्राप्त कर सकती है। श्री डोडिया के कथन की पुष्टि सर्वश्री रमा शंकर सहजक निवेशक खादी प्रामोद्योग कर्मेशन, बीकानेर, प्रेमरतन सुपरबाईजर खादी, प्रामोद्योग कर्मेशन बीकानेर, तथा शरद महुता सुपरबाईजर खादी प्रामोद्योग कर्मेशन, बीकानेर के माध्यम से भी होती है, इन सभी नियोजक भागियों में विस्तारपूर्वक प्रशिक्षण की गई है और यह साक्षी प्रशिक्षण की कमीटी पर खरे उतरे हैं इनके मौखिक कथनों की पुष्टि प्रत्येकीय साक्ष्य भी होती है तथा नियोजकों की उपरोक्त मौखिक तथा प्रत्येकीय साक्ष्य के विपरीत श्री कन्हैयालाल जोशी सचिव ने छंटनी भत्ता व नोटिस बेटन की अदायगी बाबत अनभिज्ञता ही जाहिर की है इसलिए यह साबित है कि छंटनी से एक दिवस पूर्व दि. 30-5-81 को भी महिला कर्मचारियों को नोटिस बतन व छंटनी भत्ता की राशि ओकर की गई थी और इसमें से पांच महिला कर्मचारियों ने जो उसी रोज उक्त राशि प्राप्त कर ली थी तथा शेष 14 महिला कर्मचारियों को जरिए मनीमार्डर द्वारा उक्त राशि भेज दी गई जो 13 महिला कर्मचारियों को 1-6-81 को प्राप्त हो गई तथा गोमती बाई महिला कर्मचारी को बम्बई में उस मनीमार्डर को राशि 5-6-81 को प्राप्त हो गई इन परिस्थितियों में मेरी राय में धारा 25 एफ की पालना कर दी गई है।

क्लेम की चरण में 8 में प्रार्थी संघ ने दर्ज किया है कि अनिश्चित श्रम स्वायत्त मं. 2 राजस्थान जयपुर ने एन.सी. 247/75 में 21-9-77 को अधिनियम द्वारा या जिसके द्वारा इन महिला कर्मचारियों की सेवाएं नियमित करने का आदेश हुआ था परन्तु उक्त अधिनियम की अनुपालना करने के बजाय प्रार्थी संस्था ने इनकी छंटनी कर दी। प्रार्थी ने जरिए प्रत्युत्तर यह स्वीकार किया है कि 21-9-77 को अधिनियम द्वारा या परन्तु प्रार्थी का कथन है कि यह महिला कर्मचारी दैनिक बतन पर उन सफाई का कार्य करती थी जो कार्य प्रार्थी संस्था ने बंद कर दिया और इन महिला कर्मचारियों की नियमानुसार छंटनी कर दी। मेरी राय में जब प्रार्थी संस्था ने उस सफाई का कार्य ही बंद कर दिया था तो इनकी छंटनी करने के बजाय इनको नियमित करना संभव नहीं था। यह भी उल्लेखनीय है कि अगर छंटनी के पूर्व इन दैनिक बतनभोगी महिला कर्मचारियों की सेवाएं नियमित होती तो भी धारा 25 एफ की पालना करने हुए इनकी छंटनी की जा सकती थी।

क्लेम में प्रार्थी संघ ने दर्ज किया है कि व्यक्तिगत श्रेष्ठता के कारण इन महिला कर्मचारियों की छंटनी की गई है, इनके साथ कुर्बानहार किया गया है और पुलिस को बुलाकर दबाव डालकर इनकी छंटनी की गई है परन्तु इस बजाय प्रार्थी संघ की तरफ से विश्वसनीय मध्यक या प्रत्येकीय साक्ष्य पेश नहीं की गई है यह स्पष्ट नहीं किया गया है कि जिस महिला कर्मचारी के साथ क्या कुर्बानहार कर और किमने किया। कि भी महिला कर्मचारी का परीक्षण तक नहीं कराया गया यहां तक कि प्रार्थी ने किसी भी साक्षी से इस विषय में परीक्षण भी नहीं की गई अतः साक्ष्य के अभाव में यह साबित नहीं है कि इन महिला कर्मचारियों के साथ कुर्बानहार किया गया था पुलिस को बुलाकर दबाव डालकर जबरन छंटनी की कार्यवाही की गई है।

तथ्यों व विधि के उपरोक्त समस्त कारणों से इस निर्देश का अधिनियम निम्न प्रकार से किया जाता है :—

#### निर्देश

बाधक 19 महिला दैनिक बतन भोगी कर्मचारियों की सेवाएं नियमित नहीं करते हुए इनकी 31-5-81 की छंटनी की उचित एवं वैध माना जाता है और ये महिला कर्मचारी किसी अनुतोष की अधि-

कारी नहीं है। अधिनियम प्रकाशनार्थ अंतर्गत धारा 17(1) राज्य सरकार को पठाया जावे।

जगतसिंह, न्यायाधीश,

अधिनियम आज दिनांक 5-1-93 को इस इत्याम लिखाया जाकर सुनाया गया।

नई दिल्ली, 17 मार्च, 1993

का.प्रा. 731.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता पोर्ट ट्रस्ट के प्रबन्धन के संबंध में निजीकरण और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिक्रिया कलकत्ता के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 16/3/93 को प्राप्त हुआ था।

[संख्याएन-32012/9/90-आई धारा(विधिव)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 17th March, 1993

S.O. 731.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Calcutta Port Trust and their workmen, which was received by the Central Government on the 16-3-93.

[No. L-32012/9/90-IR (Misc)]  
K. V. B. UNNY, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 4 of 1991

#### PARTIES :

Employers in relation to the management of Calcutta Port Trust

AND

Their Workmen

#### PRESENT :

Mr. Justice Manish Nath Roy, Presiding Officer.

#### APPEARANCE :

On behalf of Management—Mr. P. Roy, Deputy Labour Adviser and Industrial Relation Officer with Mr. G. Mukherjee, Personnel Officer.

On behalf of Workmen—Mr. P. C. Laha, Secretary of the Union.

STATE : West Bengal.

INDUSTRY : Port.

#### AWARD

By an order of Reference, bearing No. L-32012/9-90-IR (Misc.) dated March 27, 1991, to the following effect :—

"Whether the action of the management of Calcutta Port Trust in refusing to allow promotion as LDC to Shri Paritosh Kumar Das a Class-IV Employee of GE's Department, Calcutta Port Trust who was

kept in the panel for 3 years from 1986 onward although during currency of validity period of panel the vacancies of LDCs were very much available in Chief Engineer's Department, is justified or not - If not, to what relief the workman concerned is entitled to?"

made under Section 10(1)(d) and (2A) of the Industrial Disputes Act 1947 (hereinafter referred to as the said Act), the Appropriate Government, referred the dispute for adjudication before this Tribunal.

2. After usual notices, the parties to the dispute completed their pleadings and at the hearing, they tendered their evidence, both oral and documentary. The case of the employee Sri Paritosh Kumar Das, a Class-IV staff (hereinafter referred to as the said employee), was represented by the National Union of Waterfront Workers' (hereinafter referred to as the said Union), by filing their Written Statement on July 24, 1991 and the Calcutta Port Trust (hereinafter referred to as the said employer), also filed their Written statement on August 25, 1991. The said Union, filed a rejoinder on September 18, 1991.

3. On the basis of the admitted facts, it will appear amongst others that the said employee, a Matriculate, was employed as a Class-IV staff in the Chief Engineer's Department, initially, as a Mazdoor and thereafter, he became a Masson and after that, he became a Junior Supervisor. It would also appear that promotion to the post of Lower Division Clerk is not within the normal channel of promotion under an Award as referred to hereafter and 20 per cent promotion to such post in a year, is open to Class-IV staff and that too, according to the said employer, after test, in terms of the Award as mentioned above made in Reference No. 1 of 1950 commonly known and called as the said Das Gupta Award, the relevant extracts whereof, have been produced as Ext. M-8. Apart from the facts as indicated hereinbefore, it was the case of the said employer that the employees claiming the benefits of the said Das Gupta Award, are required to put in 10 year's of continuous service and must be Matriculate. To establish such stand, the said employer, relied on paragraph 27(6) of that Award, which is quoted hereunder :—

"(e) 20 per cent of the vacancies in the Lower Division clerical grades occurring within a year shall be open to the Class-IV employees who qualify for promotion after test. Only those who have put in 10 years' continuous service or are matriculates will be eligible for such tests."

Since, reference was also made on behalf of the said employee, to some paragraphs of the said Das Gupta Award, those paragraphs are also quoted hereunder :—

"27(f) If at a particular test more workmen than what are required are found suitable for a job, those who could not be taken in at the time shall be placed in a waiting list in order of seniority and shall be called upon to fill up vacancies as and when they crop up in future. A list of successful candidates indicating the names of those who have been taken in and of those who are in the waiting list shall be pasted on the Notice Board of the Recruiting Office."

(g) A workman once passed over shall not be debarred permanently for promotion. He may be admitted to a subsequent test and if he passes the test, he will be considered for promotion only after all the persons who had passed the previous tests as well as those who are senior to him and have qualified at the subsequent test have been absorbed."

References to the above paragraphs were made, in addition to paragraph 27(s) as quoted earlier. It was the claim of the said employer that promotion as indicated above, and as involved here, is not in the normal channel of promotion.

4. The said employer also pointed out that the above facts were not in dispute and the claim for entitlement of the said employee by the said Union, was also, on the basis of paragraph 27(s) as quoted earlier or on construction of the same. In fact, it has been stated that the posts

of Lower Division Clerks are not in the normal channel of promotion for Class-IV employees of the Port and that, each of such clerks would have separate promotional channel and in terms of the said Das Gupta Award 20 per cent of the vacancies in the Lower Division Clerk's grade, occurring within a year shall be open to Class-IV employees, who could qualify after tests and further, only those employees, who have put in 10 year's continuous service and are Matriculates, which the said employee was, will be eligible for such posts.

5. There is also no dispute that in or about July 1986, written test was held in the Chief Engineer's Department, from amongst the Class IV employees of that Department, for filling up the vacancies of Lower Division Clerks, in the exigencies of work and from amongst the successful candidates, a panel, consisting of seven employees, was formed, on the basis of seniority and out of the said panel, five candidates were absorbed in the posts of Lower Division Clerks on September 12, 1986, which the said employee has claimed to have been filled up against vacancies of 1986. The above is also not in dispute. But the said employer has stated that at the material time, there was a ban imposed by the Government of India on Direct recruitments in the Calcutta Port Trust and as the vacancies could not be kept unfilled in the interest of work, a decision was taken, to fill up 2 posts by died in harness candidates and remaining five, by promotion from Class-IV employees, after tests. It was their case that such steps were taken, even though, they were not obliged to fill up the five posts, as per the said Dasgupta Award. In any event, the above mentioned five posts were filled up by the successful candidates, according to their merit and the remaining two, as mentioned earlier, by died-in-harness candidates.

6. It has been alleged by the said Union, in September 1987, in the exigencies of work, the Chief Engineer, submitted a proposal for necessary sanction, to fill up eleven vacant posts of Lower Division Clerks, for vacancies caused at the end of 1987, so that the leftover candidates of the panel as formed, may be promoted and the panel is exhausted. It has also been alleged that after July 1988, five more vacancies in the concerned cadre, occurred in the Chief Engineer's Department, due to death and superannuation of staff and a further proposal for filling up such vacancies, was given. It has been stated that in 1989, five vacancies were allowed to be filled up and against these five vacancies, the sixth candidate of the panel was absorbed by the Chief Engineer on September 4, 1989, leaving only one i.e. the said employee. It was the further case of the said employee that in November 1987, there was another proposal given to the Administration by the Chief Engineer, for filling up 16 vacant posts of Lower Division Clerks and pending disposal of such proposal, a request was also made, to fill up one vacancy in the Lower Division Clerk by the leftover candidate of the panel, which according to the said employee, was duly revalidated by the Chief Engineer. The fact, was however denied by the said employer and there is not much cogent legal evidence on the aspect. However, if the statements of the said Union are, true, such action was only just fair and reasonable.

7. It was also the case of the said employee that in 1988, only one vacancy of Lower Division Clerk was required to be filled up for the interest of Administration and that vacancy was filled up by a died-in-harness candidate and the said employer had no obligation to fill up such post by Class-IV employees as per the said Dasgupta Award. It was their case that in 1989, there were six vacancies, one of which, was reserved for Schedule Caste candidates, two for Schedule Tribe and one for Class-IV employee of the Chief Engineer's Department, as per the Dasgupta Award. Accordingly, 2 vacancies were filled up by Schedule Tribe candidates, one by Schedule Caste and one vacancy each, by died-in harness candidates and Class-IV employees, as empanelled in the panel by successful Class-IV candidates, prepared in the year 1986. As such, it has been claimed that the quota of Class-IV employees for appointment to the post of Lower Division Clerk, in terms of the said Dasgupta Award, was duly maintained and followed.

8. The said employer has further claimed that a panel, for filling up of the promotional posts, normally extends for a period of 12 months, unless extended by a specific order, in case of unavoidable circumstances and in this case, the panel was prepared and formed, was extended upto 1989,

by specific order to that effect by Exts. M-1 and M-5 and that too, for exigencies of work and without depriving anyone from his due claim. It has further been stated that after necessary recruitment in 1989, the validity of the panel is formed in 1988, was thought, not to be kept alive, to avoid creation of any further precedence, as the normal validity of a panel was for one year only. It has been indicated that the said employee was the only leftover candidate of the panel, but he has not suffered, as he had no legitimate claim for appointment to the post of Lower Division Clerk at the relevant time and there would have been some claim and justification of his claim, if the said employer had filled in 5 more vacancies of Lower Division Clerks in a particular year, after the sixth one in the panel was appointed as Lower Division Clerk in 1989. It has been indicated that filling up vacancies, are done solely on the basis of requirements and for exigencies of work and such power, could be exercised by them, at their discretion, and such promotion as claimed, cannot be asked for, as a matter of right. The other statements and allegations in the written statement as filed by the said Union, have been denied and the said employer has further denied, knowledge of the fact, that the said employee was a member of the said Union.

9. It has also been alleged by the said Union that since no action was taken by the said employer, to redress the just and genuine grievances of the said employee, they made a representation on January 6, 1990, to the Chairman of the said employer, but unfortunately, neither the said Chairman nor the Administration gave any reply to the said Union, although they well knew that the General Secretary of that Union, was a member of the Board of Trustees of the Port of Calcutta. Such being the unfortunate position, a dispute was raised before the Assistant Labour Commissioner (C), Calcutta III, on April 3, 1990, who held joint discussions. It has been alleged that even then, due to the adamant and uncompromising attitude of the said employer, the said conciliation failed and on such failure, the present dispute was referred for adjudication.

10. The relevant facts, the basis and particulars of the pleadings of the parties have been indicated earlier and it would appear from the evidence of the said employee, being WW-1, that there was no dispute over his entry in the service and the other circumstances as indicated earlier. He has stated that it was not known to him, whether on compassionate grounds, employment was given to the heirs of a deceased employee. It was his further evidence that the employee in Serial No. 6 of the panel, in which his name was appearing, was posted in 1989, but he was not aware, how many other employees, who were in the panel, were posted in that year and he was not aware from which source, the persons were appointed in 1988 as Lower Division Clerks, and his deprivation was a measure of punishment, but he could not duly prove or establish such fact. It was his evidence that the qualifications necessary for promotion from a Mazdoor to Lower Division Clerk is 10 years of service and such fact would appear from the concerned circular, where, there was no vacancies mentioned. He of course, agreed that the persons, who were preferred to the posts of Lower Division Clerk, were seniors to him. His claim was on the basis of his empanelment in the panel, after being successful in the examination. He was not aware, as to how many posts of Lower Division Clerks, were filled up in the Department after 1986 and he was not aware, if, all the 6 other persons were empanelled. But, he was specific that those persons were seniors to him and out of them, according to him, at least two were in his Department.

11. He was not aware, whether in 1988, one post of Lower Division Clerk in his department, was filled up from amongst the heirs of employees dying in service and he was not aware, whether in 1989, alongwith the employee in serial 6 of the panel, other candidates from Schedule Caste and Schedule Tribe and other from employees died in harness, were taken as Lower Division Clerk. According to him, in his Chief Engineer's Department, the Chief Engineer gives promotion to posts of Lower Division Clerks and such promotion was not given to establishment clerks. He has said, to have received information from the said Union that the panel was alive for 2 years and he was not sure, if such panel of 1988, was extended. He agreed that from Ext. M-1, it would appear that the panel as mentioned, on extension, was valid for one year and he also agreed with the contents of the concerned circular Ext. M-2, which was issued

prior to Ext. M-1 and same contained how long and how far, the panel will remain effective. He was candid enough to say that it was not known to him, if on his employment, he can claim appointment, if in a year, there are 5 vacancies. He denied the suggestion that no injustice has been caused to him. It would appear from the evidence that the scale of Mazdoor is from Rs. 1040 to Rs. 1445 and that of L.D.C. is from Rs. 1115 to Rs. 2000. He denied the suggestion that he had no right to claim promotion as in this case, of course he was categorical that at the time of entry, he had no right, to the post other than Mason, but he has said that now, after the changed circumstances as indicated, he has a right of promotion, to the post of Lower Division Clerk. He has agreed that he is getting equal benefits in the post of Mazdoor, even though his name was not in the panel. In fact, his entire claim was on the basis of empanelment.

12. The Senior Executive Engineer has deposed as MW-1, on behalf of the said employer. He has stated that in terms of said Dasgupta Award, 20 per cent, vacancies of the post of Lower Division Clerk, can be filled up from Class-IV staff, who could qualify in necessary tests and such 20 per cent, relates the vacancies occurring in a year. He has produced extracts from the said Dasgupta Award, as Ext. M-3 as mentioned earlier and has submitted, his statements as above, would appear from Clause 27(s) of the same, the particulars whereof, I have already quoted earlier. On the basis of his recollections, he said that in 1986, there were 7 vacancies in the post of Lower Division Clerks and in case of such 7 vacancies, one would thus be open for Class-IV staff, on the basis of the said Dasgupta Award. It was his evidence that as there was a Central Government ban on recruitments at the relevant time, so the said employer appointed 5 employees from the Departmental candidates and 2 from employees died-in-harness and these 5, as above, were appointed from Class-IV staff. It was his evidence, written tests were held in 1986, where 7 employees had qualified and as such, a panel of 7 was prepared on the basis of seniority-cum-suitability and 5 persons as indicated, were appointed according to the seniority. It should be noted here, that the Central Government Order of ban as mentioned earlier, was not produced and there was no denial that the said employee could duly secure a place in the panel as formed.

13. It was his evidence that in 1988, there was only one vacancy, in the post of Lower Division Clerk and as such, the said vacancy, in terms of the said Dasgupta Award, was not open in Class-IV employees and such vacancy, was filled up from the dying-in-harness candidates, according to serials. He has further stated that in 1989, there were 6 vacancies of L.D.C. and out of them, one was reserved for the Schedule Caste candidate, two for Schedule Tribe candidates, two for employees dying-in-harness and one was for Class-IV employees. It was his evidence that in 1989 also, Departmental candidates were taken from the panel of 1986 and it was his further evidence that in 1986, 5 out of the panel, was employed, and in 1989, one person was employed, so, there remained only one left over candidate of the panel. I find that the said employee is perhaps that one left over candidate, which fact also gets support, from the evidence as recorded and so also the pleadings. This witness has referred to Ext. M-4, claiming, that by the said exhibit, it was indicated how long a panel would remain effective and the same will also show that in case of deputation candidates, the panel should be valid for one year, but the same will not be kept alive for more than 2 years. He has also produced Ext. M-5, period of validity of panels in respect of Departmental promotions, whereby certain changes have been incorporated. It was his evidence that the panel of 1986, was valid for 2 years only, but the 6th person employed in 1989, was on the basis of the special administrative sanction. This sanction, it appears, has, of course, not been produced. It was the further evidence of this witness, perhaps in 1989, the extension as obtained, was over and after such extension of the panel, left over candidate was 7th in the serial. He has said that the vacancies have been filled in, on the basis of actual requirement and volume of work.

14. It will appear that in 1986, when the written test was held, this witness was not holding the present post. He has agreed that in 1986, there were 7 vacancies and out of that, on the basis of said Dasgupta Award, 20% can be taken in, but 5 persons only, none appointed in the post of Lower



Division Clerk, on the basis of Chief Engineer's order, who initially, is the Appointing authority in respect of Class-III staff, subject to certain Administrative provisions. It was his further evidence that 5 persons were employed, because of the ban on recruitment, but he could not produce any document to support such statement. It was his further evidence that appointments as given in 1988, were also on the basis of Chief Engineer's order and perhaps, such appointments were given, because of exigencies of work. He has stated that in giving employments to 5 persons from Departmental candidates, the said employer did not violate the provisions of the said Dasgupta Award and certainly, there would have been violation of that Award, if eligible candidates were available within that 20%, but were not promoted. He has further stated that on lifting the earlier ban, there has been a fresh bar, but no evidence has been produced to support such statement. The letter dated October 5, 1980 was produced and marked as W-1. On being asked, the witness said it would not be possible for him to indicate what statements the said employer had made. The said Ext. W-1, is a record from the Assistant Labour Commissioner (C), incorporating the statements made before him, in that proceeding by the said employer. In fact, the said exhibit is a conciliation failure report. The witness has further stated that since 1989, normal situation prevailed and one man from Departmental candidate, was taken, on the basis of the said Dasgupta Award and as such, there was no provision, for appointing some one from the panel. He was not sure, whether in 1977, Administrative orders were issued in violation of the said Dasgupta Award and more particularly, Clause 2(b) of the same, the particulars whereof have been quoted earlier. It was his evidence that extension of panel for one year was asked for and if within that period, the left over candidate could have been eligible, he could have been appointed.

15. Mr. Roy appearing for the said employer, referred to the order of Reference, particulars whereof have been quoted earlier and submitted that since the term of the said Reference, is "—claims, if any" available to the said employee, the said Reference, should be deemed to be not maintainable and not properly framed, on due application of mind, which is required to be adjudicated. Such a vague Reference, according to him, was also not maintainable. He pointed out further that the said employee has been confirmed to the equivalent post and in support of his submissions regarding the maintainability of the Reference in the facts of this case as mentioned earlier, Mr. Roy referred to the case of Travancore Devaswom Board etc. and Ors. Vs. P. Savithri and Ors., 1990 (1) LLJ 276, which has been made, on consideration of the decisions in the case of Nagar Mahapalika, Kanpur Vs. Vinod Kumar Sribastaba & Ors., AIR 1987 SC 847, where the question of the validity of the period of effectiveness of a Circular, relaxing time limit of effectiveness of pending list was considered and it has been observed that pending list will mean lists of all earlier years. In that case, initially in 1976, a list was prepared for recruitment of clerks, thereafter, in 1978, fresh list was prepared and candidates included in 1976 list, were not given appointment on the basis that they cannot claim appointment on the basis of the concerned circular, and which case has further indicated that having regard to the purpose and subject of preparing selection panel, fixation of life of selection list as one year, which was done in that case, was not arbitrary or unreasonable. Then and while on the point, Mr. Roy made a further reference to the case Arbin-dakehan Vs. State of Kerala 1989 (2) LLJ 301, where, one of the questions for consideration was, the right of selected candidates sponsored by Employment Exchange and selected for appointment and when the list of selected candidate was prepared on the basis of a written test and interview and in the meantime, the Government decided to make recruitment through Public Service Commission and gave a go-by to candidates sponsored by Employment Exchange and made the reselection. It has been observed in the facts of that case that there was no judicial enforceable right to get appointment, merely on the basis of selection. This case, as pointed out by Mr. Roy, has considered the case of Krishan Chander Vs. Central Tractor Organisation, 1962 (1) LLJ 661, where it has been indicated that the fundamental right guaranteed by the Constitution, is not only to make an application for a post under the Government, but, further right to be considered on merits for the post, for which an application has been made. Of course, the right does not extend to be actually appointed to the post, for which an application may have been made. Thereafter, reference was made by him, to the case of Jatindra Kumar and Ors. Vs. State of Punjab and Ors. A.I.R.,

1984 SC 1850, where on consideration of facts and the question as cropped up, it has been indicated that persons selected by the Public Service Commission, have got no right to be appointed, as such, no Mandamus can go. While on the point, a further reference was made by Mr. Roy to the determinations in K. Jagdeesan Vs. Union of India and Ors. 1990 (1) LLJ 495, where the question, which cropped up was, if promotion to a post would constitute and/considered to be reduction in chance of promotion and would tantamount to alteration of service condition and if, Rules prescribing for promotion, can be amended retrospectively. It has been observed, more chance of promotion is not a condition of service and the fact, that there was reduction in the chance of promotion, did not tantamount to a change in the conditions of service and further, a right to be considered for promotion, is not. In that decision, the case of State of Maharashtra Vs. Chandra Kant Ananda Kulkarni and Ors. 1981 (2) LLJ 433, was taken note of and considered.

16. Mr. Laha, appearing for the said employee, fairly stated that even though cases as cited, are reported, he was not in a position to make any submissions in the matter, since he has not considered them earlier, but he pointed out, there was no dispute that the name of the said employee was in the panel of the concerned channel of promotion and the said employee, on the basis of the concerned scheme and because of his panel position and since he was also a Matriculate, was entitled to be promoted and posted to the post of Lower Division Clerk, in terms of paragraphs 27(f) and (g) of Ext. M-3. It was further submitted by him that the ban as referred to and relied on by the said employer, in their defence as indicated, had or has no application, because, the same cannot be considered as a ban for existing employees and if at all, the same is prospective and not retrospective and is applicable in respect of the new entrants only. It was his further and specific submission that the panel as duly framed and where the name of the said employee appeared, was valid and enforceable and the validity period of the same was not duly, legally and properly curtailed. It was his further submission that Ext. M-1 was not in force in 1986 and in any event, Clause-III of Ext. M-2 has not been duly and appropriately considered, while depriving the said employee from his posting as Lower Division Clerk or the promotion, as is being claimed by him.

17. On a construction of the Reference as made, Mr. Laha claimed, contended and indicated that there were vacancies available, for which the said employee could get a post of Lower Division Clerk and in refusing such posting, the said Dasgupta Award or the provisions thereof, have not been duly followed and complied with. Mr. Laha further referred to that Award and said, it would thus be patent and clear that the said employer was guilty of gross inaction and thus, they have deprived the said employee, of his legitimate claim as mentioned above.

18. In reply Mr. Roy pointed out that it is true, the ban as indicated, was not on the promotional vacancies, but, as there has been no illegality or any irregularity committed by the said employer, in not considering the said employee and that Clauses (f) and (g) of paragraph 27 of the Dasgupta Award, had or has no relevance and application in the facts of the present case, no interference is necessary or should be made.

19. The submissions of Mr. Roy, on the question of imposition of ban on employment, it appears, would not be of much help, substance and assistance, as, such bar, if at all, was prospective and not retrospective and as such, would not be available or applicable in the case of the said employee, since he was already in employment and that too, much earlier than the ban, as said to have been imposed.

20. The said employee in this case, duly and positively had the necessary educational qualifications, being a Matriculate, apart from the other qualifications, in terms of paragraph 27(f) of the said Dasgupta Award, for the post of Lower Division Clerk and also, as he was duly empanelled, which panel has of course been said to have spent its force or was not alive at the relevant time, in terms of Ext. M-5. It cannot also be doubted or disputed, in view of the determinations as cited at the Bar, a panel once formed, continues for all times to come unless cancelled and further, the employer has a right to determine the life or such panel, when



formed, provided of course, by such act of curtailing the life and effectiveness of the panel, as duly formed, no action is taken against any law or against any determinations including that of an Award, in this case, the said Dasgupta Award. It cannot also be denied, even on reference to the cases as cited at the Bar, that a list or panel, when prepared or formed and until the same is duly cancelled, all persons in the list or panel until exhausted, will have a right to be considered for appointment and promotion, if they are otherwise suitable and qualified. The said employee, in this case, as indicated earlier, had the necessary qualifications on both the counts as mentioned earlier.

21. Thus, the question for consideration in this case will be, if the life of the panel, is formed, was duly curtailed and even if, such curtailment was duly made, if the said employee was entitled to be considered for the post of Lower Division Clerk on his right or even without empanelment? A further and ancillary question, which requires determination/consideration, is, if the said employee, received due treatment in the hands of the said employer and if the action as taken, was due, just and bonafide or otherwise.

22. I do not find any defect in the making of the Reference or on the language of the same. Thus, the submissions of Mr. Roy on that point, cannot be sustained. The Reference was not actually vague and indefinite, as suggested by him.

23. Paragraph 27(f) of the said Dasgupta Award lays down the qualifications and criteria for promotion and the terms of paragraph 27(f) provides that persons empanelled in a panel, as in this case, should be placed in a waiting list for being appointed or absorbed subsequently, according to their seniority position, if they are otherwise qualified, which qualifications, as indicated earlier, the said employee definitely possessed and that too, in terms of paragraph 27(s) of the said Dasgupta Award, the particulars of the requirements whereof, have been indicated earlier. Since the case under consideration was not one of passing over on the basis of the instances as indicated in paragraph 27(g) of the said Dasgupta Award, those provisions, in my view, would not be of any help or assistance in this case. There is no evidence that the said Dasgupta Award has either been set aside or overruled and both the parties to this proceedings, in fact, placed heavy reliance on the same and as such, the said Dasgupta Award should be deemed to be or considered as laying down the guidelines for promotion to Lower Division Clerks and since these provisions being evolved through an Award, duly made and are subsisting, so they, in my view, should have the force of law and binding, which again, I feel, cannot be sought to be curtailed or given a go-by, unless set aside, through Executive directions, as in Exts. M-1, M-2, M-4 and M-5, as ultimately by that Ext. M-5, the period of effectiveness of the panel, as duly framed, was sought to be curtailed, not only to the adverse interest of the said employee, but the said Exhibit also sought to restrict, the effect of paragraph 27(s) of the said Ext. M-3. It cannot be agreed that the submissions on paragraph 27(f) and (g) and specially the former one, are not relevant for this case. As indicated, paragraph 27(f) is very much relevant in the facts of this case, since the case here, is not one of passing over the said employee. I also think paragraph 27(g), has got no application or will be of much help or any relevance.

24. Thus, the Reference should be and as such, it is hereby answered in the affirmative and in favour of the said employee and as a result whereof, the said employee, should be promoted to the post of Lower Division Clerk at once or as soon as further vacancy in the post will occur.

This is my Award.

MANASH NATH ROY, Presiding Officer

Dated, Calcutta,

The 29th January, 1993.

नई दिल्ली 17 मार्च, 1993

का. प्रा. 732—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14)  
की धारा 17 के अन्वय में केंद्रीय सरकार एन. सी. ओ. (फोन्स)  
बीकानेर के प्रबंधक के संलग्न निवेदन और उनके कर्मचारियों के बीच  
738 GI/93—5

अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अतिक्रमण बीकानेर  
के पंचपट को प्रकाशित करना है जो केंद्रीय सरकार को 16-3-93 को  
प्राप्त हुआ था।

[सं. एन-40012/58/89-आई.आर. (पी.यू.) (पी.टी.)]

के. वी. जी. उन्नी, डेस्क ऑफिसर

New Delhi, the 17th March, 1993

S.O. 732.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bikaner as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.D.O. Phones, Bikaner and their workmen, which was received by the Central Government on 16-3-93.

[No. L-40012/58/89-IR(DU)(Pt.)]

K.V.B. UNNY, Desk Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण एनम्. अम न्यायालय, बीकानेर  
अम विवाद प्रसंग सं. 2 सन् 1989

औद्योगिक विवाद का सत्य की धारा के. भारतीय विन्यासी बीकानेर

—प्रार्थी/अतिक्रमण

कलाम

एस. डी. जी. (फोन्स) बीकानेर.

—अधीनस्थ/निरीक्षण

निर्देश अन्वयित धारा 10(1) ए. ओ. वि. अधिनियम, 1947

न्यायाधीश: श्री गगन सिंह धार एच. के. एन.

उपस्थिति:—

1. श्री रामकृष्ण दाम गुप्ता —अधिक प्रतिनिधि

2. श्री हरेन्द्र महोदय —निरीक्षण प्रतिनिधि  
अधिनियम

दिनांक 5 नवम्बर, 1992

अम संज्ञाया केंद्रीय सरकार अपने आदेश क्रमांक एन-40012/58/89/आई.आर. (पी.यू.) दिनांक 5 नवम्बर, 1989 द्वारा प्रेषित इस निर्देश के अन्तर्गत निम्न विवाद अम न्यायाधिकरण को अधिनियमार्थ पठाया है:—

“Whether the action of the management of S.D.O. (Phones) Bikaner is justified in terminating the service of Shri Omt Prakash. Casual Labour w.e.f. 25-9-87? I not, to what relief is the workman entitled?”

2. प्रार्थी अधिक ओम्प्रकाश जिसे तत्पश्चात् अधिक सम्बोधित किया गया है ने जरिये क्लेम प्रकट किया है कि उसकी नियुक्ति घरायी के अधीन 1-10-81 को वैयक्तिक वेतन भीषी अधिक के रूप में हुई थी जहां पर वह 24-9-87 तक लगातार कार्यरत रहा है। 25-9-87 को उसे निरीक्षण के बिना कारण बताये बिना नोटिस दिये और बिना छुट्टी का मुआवजा दिये सेवानिवृत्त कर दिया। अधिक कहता है कि सेवानिवृत्त के समय उससे कनिष्ठ अधिक श्री विजयगिरि, जवलान, पूर्णसिंह, मुखाराम, गोपीकिशन, भलनाथ व अखाराम आदि नियोजन में थे इसलिए प्रार्थी ने धारा 25-एफ और 25-जी का उल्लंघन किया है। अधिक की प्रार्थना है कि सेवानिवृत्ति आदेश अमान्य किया जावे और उसे सेवा में मानते हुए उन वर का वेतन व अन्य सभी लाभ दिये जावें।

3. अर्थात् ने जरिये प्रत्युत्तर क्लेम के कथनों को अस्वीकार करते हुए कहा है कि प्रार्थी को सेवानिवृत्त नहीं किया गया बल्कि वह स्वयं पद त्यागकर अत्यंत कार्य करने लग गया। इसलिए अधिक की न तो छुट्टी

की गई थी। न ही वह धारा 25-एफ. के प्रावधानों के लाभ का अधिकारी है।

4. अपने कथनों के समर्थन में अधिक ओमप्रकाश ने स्वयं का मध्यस्थ पेश किया जिसने नियोजक प्रतिनिधि ने निरह की है। इसके विपरीत नियोजक की तरफ से सर्वश्री मोहनलाल यादव एवं शिवाकुमार मिश्रा ने अपक्ष पेश किये थे जो गोपालसिंह तथा नन्दराम मुद्गल का परीक्षण कराया गया जिसमें अधिक प्रतिनिधि ने निरह की है। प्रतिनिधि न्याय में अधिक कोशरफ से प्रदर्श डबल्यू. 1 और 2 पेश हुए और नियोजक की तरफ से प्रदर्श एम. 1 तथा एम. 12 पेश किये गए थे।

5. अंतर्गत में न्यायाधीशों का निरीक्षण किया और पक्षधरों के प्रतिनिधियों का विचारपूर्वक आला।

6. न्याय के अनुसार ही अधिक ने अपने अपक्ष पक्ष में कहा है कि उसने 1-10-81 से 21-9-87 तक लगातार सेवा की है और वेतन प्राप्त किया है। अप्रार्थी नियोजक की तरफ से मोहनलाल यादव ने मस्टर रोल प्रदर्श एम. 1 और 2 साबित किये हैं जबकि शिवकुमार मिश्रा ने प्रदर्श एम. 3 साबित किया है। एम. गोपालसिंह ने प्रदर्श एम. 4 तथा एम. 10 साबित किये हैं जबकि नन्दराम मुद्गल ने प्रदर्श एम. 11 व 12 साबित किये हैं। इन प्रकार प्रार्थी की साक्ष के साथ-2 अप्रार्थी ने भी यह स्वीकार किया है कि 21-9-87 को मरण हुए कर्णेश्वर वर्मा ने एम. अधिक ने 240 दिनों में अधिक की सेवाएँ पूरी करवा लीं और इसके पूर्व भी वह अत्यंत कम में 240 दिनों में अत्यंत कार्य करवा था।

7. बहुत से दौरान नियोजक प्रतिनिधि का यह तर्क नहीं था कि अधिक ने 240 दिनों की सेवाएँ पूरी नहीं कीं हो कि उदाहरण कहता तो यह था कि उन्होंने सेवाभूक्त नहीं कीं अधिक यह स्वयं कार्य छोड़कर अन्य कार्य करने लग गया। नियोजक साक्षी गोपालसिंह ने अपने परोक्ष में कहा है कि अप्रैल 87 के बाद अधिक मेरे पास काम पर नहीं आया। प्रतिपरीक्षा करने पर गोपालसिंह ने स्वीकार किया है कि एन. डी. ओ. (कोर) टीम बनाकर सार्वजनिक पर काम करने के लिए जाता है, जिस हस्पिटल के साथ अधिक काम पर जाता वह हस्पिटल मस्टर रोल में अपना नाम भरता, अधिक को हटाने और रखने का काम एम. डी. ओ. का ही है। जुलाई 86 में भी अधिक ने मेरे पास काम किया। मेरी राय में, गोपालसिंह के उपरोक्त बयान से ही यह साबित नहीं माना जा सकता कि अधिक ने स्वयं सेवा का त्याग किया हो। विशेषकर उस परिस्थिति में जबकि उक्त छ. वर्ष तक अधिक अप्रार्थी के यहाँ कार्यरत था और उसने 25-9-87 के तुरन्त उपरान्त समझौता बार्ता में भी विवाद खड़ा कर दिया था। सामान्यतया कोई भी व्यक्ति अपने पद का त्याग तब तक नहीं करता जब तक उसे कोई आर्थिक पद प्राप्त नहीं हो जाता। अतः इस पैसा लगातार कार्य करने वाला तो बिना किसी कारण के पद त्याग नहीं करेगा। तर्क के लिए मान भी लिया जाय कि अधिक ने पद त्याग कर दिया था तो भी नियोजक से यह अपेक्षा है कि वह कारण बताओ नोटिस देना और नियमानुसार आरोप अधिरोपित कर जांच कराके दण्ड अधिरोपित करवा क्योंकि बिना सूचना अनुपस्थित रहना एक दुराचरण था। नियोजक के किसी भी साक्षी ने यह नहीं कहा कि उसे अधिक ने यह कहा हो कि वह पद त्याग कर जा रहा है बरिष्ठ नियोजक साक्षी गोपालसिंह का बयान ही कहता है कि 26-7-87 के बाद उसके पास अधिक काम करने नहीं आया। नियोजक साक्षी शिवकुमार मिश्रा ने ही प्रतिपरीक्षा में स्वीकार किया है कि 1-10-81 से लगातार अधिक ने हमारे विभाग में काम किया है। इन परिस्थितियों में अधिक स्वयं द्वारा पद त्याग करना साबित नहीं है तथाकथित पद त्याग भी छंटनी की परिभाषा में आता है। इसलिए या तो नियोजक पद त्याग करने बावत दुराचरण मानते हुए अधिक के विशद नियमानुसार जांच कर उचित दण्ड देना अवकाश धारा 25-एफ के प्रावधानों का लाभ देता। इन परिस्थितियों में धारा 25-एफ की अवकाश देना ही है।

8. अधिक का यह भी कहना है कि 25-9-87 को उसने कनिष्ठ अधिकारी नियोजक, जयलाल, पूर्णसिंह, मुखाराम, गोपालसिंह, अन्ताक, धर्माराम आदि नियोजक से थे, जिस न्याय को अधिक ने अपने अपक्ष पक्ष में भी दर्ज किया है परन्तु फिर भी उसने इन विषय पर प्रतिपरीक्षा नहीं की गई है। नियोजक साक्षी गोपालसिंह भी प्रतिपरीक्षा में स्वीकार करता है कि विजयसिंह, जयलाल, पूर्णसिंह, मुखाराम, गोपालसिंह, अन्ताक व मुखाराम अधिक के बाद गये होंगे। अब अधिक ने क्लेन में ही अपने वे कनिष्ठ अधिकारियों के नाम दर्ज कर दिए थे तो नियोजक के लिए यह आवश्यक था कि क्लेन के प्रमुख द्वारा जांच करके कि क्या कनिष्ठ अधिकारी ने क्लेन में या नहीं प्रवेश अधिक का सेवा सुविधा के समर्थन के कारण से या नहीं। ऐसा न हो नियोजक द्वारा क्लेन के प्रमुख से पेश की गई है वहाँ तक कि अधिक ओमप्रकाश से भी इस विषय पर प्रतिपरीक्षा नहीं की गई है इसलिए अधिक का कथन अस्वीकार्य रह जाता है और यह साबित है कि 25-9-87 को अधिक ने कनिष्ठ अधिकारी प्रदायी की सेवा में थे और इस प्रकार धारा 25-ओ की सेवा अवकाश देना ही है।

9. तथ्यों और विधि के उपरोक्त समस्त कारणों से इस निर्णय का अधिनियम निम्न प्रकार किया जाता है:—

प्रार्थी ओमप्रकाश वैदिक वेतनशोभी कर्मचारी की दिनांक 25-9-87 से सेवानिवृत्त उचित एवं सेवा नहीं है और इसी दिनांक पर पर नियोजित घोषित किया जाता है और इसकी सेवा में निरन्तरता कागज रखी जाती है एवं इसे इस पद का वेतन व अन्य सभी लाभ दिलाया जाता है। एम. डी. ओ. सेवा सुविधा भी दिलाया जाता है। अगर नियोजक ने इस अधिनियम के प्रकाशन के तीन माह उपरान्त भी अधिक को उक्त राजि प्रदायी की तो उसे 12 प्रतिपक्ष प्रतिपक्ष की दर से बराब भी देना पड़ेगा।

अधिनियम केन्द्रीय सरकार को औद्योगिक विशद अधिनियम की धारा 17(1) के अन्तर्गत प्रकाशन हेतु पठाया जाने।

10. आज्ञा आज दिनांक 5-11-92 को मरे दस्तावेज लिखाई व मुद्राई गई।

न्याय सिद्ध, स्वाधीन

नई दिल्ली, 18 मार्च, 1993

का.या. 753-कर्मचारी भविष्य निधि योजना, 1952 के पैरा 52 के उप पैरा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करने हुए और भारत सरकार, अथवा संसद की अधिसूचना संख्या का.या. 111(ई.), दिनांक 24 मार्च, 1986 का अधिसूचना करने हुए, केन्द्रीय सरकार एवम् द्वारा यह निर्देश देती है कि निधियों में संबंधित सर्वोपयोगिता का निवेश निम्नलिखित पैरों के अनुसार किया जावेगा, अर्थात्:—

निवेश पैर	निवेश की जाने वाली राशि का प्रतिशत
1	2
(i) (क) सांख्यिक अणु अधिनियम, 1944 (1944 का 18) की धारा-2 में उपाधिविधायित्व वाली सरकारों प्रति-भूतियों जिन्हें किसी भी राज्य सरकार द्वारा सुविधा तथा जारी किया गया हो।	परिशुद्ध प्रतिशत
(ख) कोई अन्य पराक्रम प्रतिभूति जिसके मूलधन और इसके व्याज को पूरे	

1	2	3
और बिना जर्त गारंटी केन्द्रीय सरकार या किसी राज्य सरकार द्वारा दी गयी हो।		2. विशेष जमा योजना में निवेश करने समय निधियों का प्रशासित करने वाला प्राधिकारी इसा कार्यालय को इस आशय का प्रमाण पत्र प्रस्तुत करेगा कि इस अधिसूचना में सरकार द्वारा निर्धारित निवेश पैटर्न का पालन किया गया है।
(iv) भारत सरकार, वित्त मंत्रालय, प्राथमिक कार्य विभाग की अधिसूचना नं. ए-16(1)-पी.डी./75 दिनांक 30 जून, 1975 द्वारा प्रदत्त की गयी विशेष जमा योजना जिसका विस्तार अधिसूचना नं. एफ-16(8)-पी.डी./84 दिनांक 12 जून, 1985 द्वारा किया गया था।	संलग्न प्रतिज्ञा	3. केन्द्रीय सरकार द्वारा जारी प्रतिभूतियों पर बाह्य और विशेष जमा पर बाह्य के माध्यम से प्राप्त धनराशि का निवेश विशेष जमा योजना में किया जा सकता है। इसी तरह, राज्य सरकारों द्वारा जारी प्रतिभूतियों या सरकार द्वारा गारंटीकृत प्रतिभूतियों, ऐसी प्रतिभूतियों पर प्राप्त धन में भी निवेश किया जा सकता है।
(iii) बैंको सहित सार्वजनिक क्षेत्र के वित्तीय संस्थानों के वास्तु/प्रतिभूतियाँ।	पत्र प्रेषित	4. निवेश का उक्त पैटर्न 1 अप्रैल, 1993 में लागू होगा। [सं. जी-27031/2/89-एच.एस.-[1] जे.पी. शुकला, अवर सचिव]

New Delhi, 18th March, 1993

S.O. 733 :- In exercise of the powers conferred by sub-paragraph (1) of Paragraph 52 of the Employees' Provident Funds Scheme, 1952 and in supersession of the notification of the Government of India in the Ministry of Labour No. S. O. 111 (E) dated the 24th March, 1986, the Central Government hereby directs that all moneys belonging to the funds shall be invested in accordance with the following pattern namely :-

#### INVESTMENT PATTERN

#### PERCENTAGE OF AMOUNT TO BE INVESTED.

- |   |                  |
|---|------------------|
| (i) (a) Government Securities as defined in Section 2 of the Public Debt Act, 1944 (18 of 1944) created and issued by any State Government  | Fifteen percent. |
| (b) Any other negotiable securities the principal where of and interest whereon is fully and unconditionally guaranteed by the Central Government or any State Government.  |                  |
| (ii) Special Deposit Scheme introduced by the notification of Government of India in the Ministry of Finance, Department of Economic Affairs No. F 16(1)-PD/75 dated the 30th June, 1975, as extended by Notification No. F. 16 | Seventy percent. |
| (8)—PD/84 dated the 12th June, 1985.  |                  |
| (iii) Bonds/Securities of public sector financial institutions including banks  | Fifteen percent. |

2. At the time of making an investment in the Special Deposit Scheme, the authority administering the fund/s shall furnish a certificate to the Deposit Office, that the investment pattern prescribed by Government in this Notification has been followed.

3. Where moneys are received by way of interest on securities issued by Central Government and interest on Special Deposits, such moneys can be invested under the Special Deposit Scheme. Similarly, investments can be made in securities issued by State Governments or securities guaranteed by Government, the interest realised on such securities.

4. The above pattern of investment shall come into force with effect from the 1st April, 1993.

[No. G—27031/2/89—SS. II]  
J. P. SHUKLA, Under Secy.

नई दिल्ली, 19 मार्च, 1993

का.धा. 734--कर्मचारों भविष्य निधि और प्रकीर्ण उपबंध अधिनियम 1952 (1952 का 19) की धारा 16 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, तथा अब संसद के दिनांक 24 जून 1991 के का.धा. संख्या 1957 में पारित संशोधन करने हुए केंद्रीय सरकार की, मामले की परिस्थितियों की ध्यान में रखते हुए, यह राय है कि ऐसा करना समीचीन है व संलग्न प्रस्तावों में निम्नलिखित स्थानों के लोगों को इस अधिनियम के प्रकाशन की तिथि से तीन वर्षों की अवधि के लिए इस अधिनियम के अन्तर्गत से निम्नलिखित शर्तों के अधीन एतद्वारा छूट देती है, यथातः—

- (I) नियोजक एक न्याय या गठन करेगा और भविष्य निधि के प्रबंध के लिए न्याय बोर्ड स्थापित करेगा। भविष्य निधि न्याय बोर्ड में निहित होगी जो अपने प्राप्ति के उचित धन और भविष्य निधि से प्रदायकों और उनके धन प्रविणों के लिए उत्तरदायी होगा;
- (II) बोर्ड द्वारा रख गए भविष्य निधि के धन की किसी भी शर्त के अंतर्गत एकलुपेक्षित द्वारा वार्षिक लेखा परीक्षा की जाएगी;
- (III) लेखा परीक्षा किए गए वार्षिक भविष्य निधि खातों को प्रतिष्ठान की प्रत्येक गणना किए जाने वाले वर्ष की लेखा परीक्षा की गई अधिवेश सूची सहित वित्तीय वर्ष के समाप्त होने के छः महीने के भीतर संबंधित क्षेत्रीय भविष्य निधि प्राधिक को प्रस्तुत किया जाएगा।
- (IV) भविष्य निधि अंशदान का निवेश समय-समय पर निर्धारित तरीके के अनुसार किया जाएगा, और
- (V) इस अधिसूचना में विनिर्दिष्ट शर्तों में से किसी एक शर्त के अतिक्रमण के लिए, छूट को रद्द किया जा सकता है।

प्रस्ताव

- (I) सभी शिक्षण संस्थान जो सोसाइटी पंजीकरण अधिनियम, 1860 के अन्तर्गत "सोसाइटी" के रूप में अथवा इंडियन ट्रस्ट अधिनियम, 1882 के अन्तर्गत "ट्रस्ट" के रूप में पंजीकृत हैं और जिनके कर्मचारी केंद्रीय सरकार अथवा राज्य सरकार अथवा ऐसे शिक्षण संस्थान स्थित हैं, के कर्मचारियों के समान और-अंगदायी भविष्य निधि, पेंशन प्राप्त करते हैं।
- (II) सभी शिक्षण संस्थान, जो सोसाइटी पंजीकरण अधिनियम, 1860 के अन्तर्गत "सोसाइटी" के रूप में अथवा इंडियन ट्रस्ट अधिनियम, 1882 के अन्तर्गत "ट्रस्ट" के रूप में पंजीकृत हैं और जिनके कर्मचारी समय-समय पर संशोधित कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 के अन्तर्गत बनाई गई योजनाओं के अधीन उपलब्ध लाभों के समान अंगदायी भविष्य निधि, परिवार पेंशन और जमा सम्बद्ध बीमा सुविधा प्राप्त कर रहे हैं।

[सं. एन-35015(13)/90-एसएस-II]

जे. पी. शुकला, अवसर सचिव

New Delhi, the 19th March, 1993

S.O. 731. --In exercise of the powers conferred by sub-section (2) of section 16 of the Employers' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), and in partial modification of the Ministry of Labour S.O. No. 1957, dated the 24th June, 1991 the Central Government, after having regard to the circumstances of the case, is of the opinion that it is expedient

so to do, hereby exempt the classes of establishments specified in the Schedule annexed hereto from the operation of the Act for a period of three years with effect from the date of publication of this notification, subject to the following conditions, namely :—

- (i) The employer shall constitute a Trust and establish a Board of Trustees for the management of provident fund. The provident fund shall vest in the Board of Trustees who will be responsible for proper accounts of the receipts into and payments from the provident fund and the balance in their custody;
- (ii) The accounts of the provident fund maintained by the Board shall be subject to audit by a qualified independent Chartered Accountant annually;
- (iii) A copy of the audited annual provident fund accounts together with the audited balance sheet of the establishment for each accounting year shall be submitted to the concerned Regional Provident Fund Commissioner within six months after the close of the financial year;
- (iv) The investment of the provident fund contribution shall be made as per the pattern prescribed by the Central Government from time to time; and
- (v) The exemption is liable to be cancelled for violation of any of the conditions specified in this Notification.

## SCHEDULE

- (i) All educational institutions, which are registered as 'Society' under The Societies Registered Act, 1860 or as 'Trust' under Indian Trusts Act, 1882 and whose employees are in receipt of non-contributory provident fund, pension at par with the employees of Central Government or with the employees of State Government in such State where the educational institution is located.
- (ii) All educational institutions which are registered as 'Society' under the Societies Registration Act, 1860. or as 'Trusts' under Indian Trusts Act, 1882 and whose employees are in receipt of contributory provident fund, family pension and deposit-linked insurance at par with benefits available under the Schemes framed under the Employees Provident Funds and Miscellaneous Provisions Act 1952 as amended from time to time.

[No. S. 35015(13)/90-SS-II]

J. P. SHUKLA, Under Secy.